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JOHNS HOPKINS UNIVERSITY STUDIES
IN
HISTORICAL AND POLITICAL SCIENCE

HERBERT B. ADAMS, Editor

History is past Politics and Politics present History — *Freeman*

VOLUME IX

EDUCATION, HISTORY, AND POLITICS

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TABLE OF CONTENTS.

PAGE

I–II. Government and Administration of the United States. By W. W. Willoughby, A. B. (J. H. U.), Fellow in History, and W. F. Willoughby, A. B. (J. H. U.), Department of Labor, Washington, D. C. 1

III–IV. University Education in Maryland. By B. C. Steiner, A. M. (Yale), Fellow in History 145

The Johns Hopkins University (1876–1891). By President D. C. Gilman. With Supplementary Notes on University Extension and the University of the Future. By R. G. Moulton, A. M., Cambridge, England 183

V–VI. The Communes of Lombardy from the VI. to the X. Century. By William Klapp Williams, Ph. D. (J. H. U.), Newberry Library, Chicago 233

VII–VIII. Public Lands and Agrarian Laws of the Roman Republic. By Andrew Stephenson, Ph. D. (J. H. U.), Professor of History, Wesleyan University . . . 319

IX. Constitutional Development of Japan (1853–1881). By Toyokichi Iyenaga, Ph. D. (J. H. U.), Professor of Political Science in Tokio Senmon-Gakko . 423

X. A History of Liberia. By J. H. T. McPherson, Ph. D. (J. H. U.), Professor of History, University of Georgia 479

XI–XII. The Character and Influence of the Indian Trade in Wisconsin. By Frederick Jackson Turner, Ph. D. (J. H. U.), Professor of History, University of Wisconsin 541

I-II

GOVERNMENT AND ADMINISTRATION

OF THE

UNITED STATES

JOHNS HOPKINS UNIVERSITY STUDIES
IN
HISTORICAL AND POLITICAL SCIENCE

HERBERT B. ADAMS, Editor

History is past Politics and Politics present History — *Freeman*

NINTH SERIES

I-II

GOVERNMENT AND ADMINISTRATION

OF THE

UNITED STATES

BY

WESTEL W. WILLOUGHBY, A. B.
Fellow in History

AND

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BALTIMORE
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TABLE OF CONTENTS.

Chapters.		Page.
I.	Preface	7
II.	Government	9
	Monarchy.	
	Absolute.	
	Limited.	
	Aristocracy.	
	Democracy.	
	Republic.	
	Popular Government.	
III.	Functions of Government	15
	Necessary.	
	Optional.	
IV.	Colonial Governments: Their Relation to Each Other, and to England	19
	Provincial.	
	Proprietary.	
	Charter.	
V.	Steps Toward Union—Articles of Confederation	25
	New England Confederation.	
	Albany Convention.	
	Stamp Act Congress.	
	First Continental Congress.	
	Second Continental Congress.	
	Articles of Confederation.	
	Elements Tending to Separation and to Union.	
	Purposes of the Confederation.	
	Scheme of Government under the Articles.	
	Defects of the Articles.	
VI.	Adoption of the Constitution	32
	The Constitutional Convention.	
	Arguments For and Against Adoption.	

Chapters.		Page.
VII.	Presidential Succession	37
VIII.	Election of Senators	39
IX.	Congressional Government	41
X.	Cabinet and Executive Departments.	46
	State Department.	
	Treasury Department.	
	War Department.	
	Navy Department.	
	Interior Department.	
	Commissioner of Land Office.	
	Commissioner of Pensions.	
	Commissioner of Patents.	
	Commissioner of Indian Affairs.	
	Bureau of Education.	
	Commissioner of Railroads.	
	Geological Survey.	
	Superintendent of the Census.	
	Post Office Department.	
	Department of Justice.	
	Department of Agriculture.	
	Department of Labor.	
	Interstate Commerce Commission.	
	Fish Commission.	
	Civil Service Commission.	
	Government Printing Office.	
	National Museum, Smithsonian Institution, and Bureau of Ethnology.	
	Librarian of Congress.	
XI.	The Federal Judiciary	69
	Federal Judicial System.	
	District Courts.	
	Circuit Courts.	
	Jurisdiction.	
XII.	Ordinance for Government of the Northwest Territory	78
XIII.	Government of Territories	80
	Admission of a Territory as a State.	
XIV.	State Governments	83
	State Constitutions.	
	State Legislatures.	
	State Executives.	
	State Judiciary.	

Chapters.		Page.
XV.	Local Government	88
	In New England.	
	In the South.	
	In the West.	
XVI.	City Government	92
XVII.	Government Revenue and Expenditure	94
	Federal Government.	
	State and Local Taxes.	
	Expenditures.	
	Maryland.	
	Baltimore.	
XVIII.	Money	103
	Gold Coin, Gold Bullion, and Gold Certificates.	
	Silver Dollars and Silver Certificates.	
	Subsidiary and Minor Coins.	
	Treasury Notes.	
	Notes of National Banks.	
XIX.	Public Lands of the United States	107
	Educational Grants.	
	Land Bounties for Military and Naval Service.	
	Land Grants to States for Internal Improvement.	
	Sale of Public Land.	
	Under Pre-emption Acts.	
	Under Homestead Acts.	
	Under Timber Culture Act.	
	Certain Lands to States.	
	Grants to Pacific and other Railroads.	
XX.	Reconstruction	111
XXI.	Party Machinery	113
XXII.	National Conventions and Presidential Campaigns	116
	History and Development of the National Convention.	
	Method of Procedure.	
XXIII.	Introduction to the Study of the History of Political Parties in the United States	120
	Bibliographical Note	134

GOVERNMENT AND ADMINISTRATION OF THE UNITED STATES.

CHAPTER I.

Preface.

These chapters were originally prepared for and used as a manual in the public schools of the District of Columbia. In a revised and amplified form they are now published as one of Johns Hopkins University Studies in History and Politics.

The aim of this revision is to furnish assistance to students beginning the study of the history and practical workings of our political institutions. It is not the purpose to furnish a complete text-book upon the government of the United States and its administration, but, by a clear, concise statement of the salient points of our federal system, and a description of the actual workings of the characteristic features of our institutions, to give to the student a better understanding of the manner in which the same are administered, than is to be obtained from the ordinary text-books on Civil Government.

These Outlines are intended as an aid to both teacher and pupil, and for use in a class whose members are already familiar with the leading events and names in United States history. The work is intended to furnish such supplementary information as can be obtained only with great difficulty by most teachers, and which for the most part cannot be obtained at all by the pupils.

The authors have endeavored to make prominent the fact that our present form of government is far from being contained in the written constitution of 1787, and consequently, that a study of that instrument alone will give a very inadequate idea of our government as it is. The constitution was but a foundation upon which to build a government.

Nothing like an analysis or commentary upon the constitution of the United States is here attempted. The public is already well supplied with books covering that ground. History proper, except as showing the basis and reason for the establishment of our institutions, has likewise found no place here.

The book is to be used chiefly as a manual, to supply information that would otherwise need to be dictated by the instructor. The Outlines are in many particulars merely suggestive. Many topics are simply mentioned, which the teacher must elaborate and explain at greater length.

Lastly, though this book does not pretend to give a connected account of our administration or politics, yet the subjects have been carefully arranged in such an order as would most naturally be followed in a course to which the work is intended to be an aid.

CHAPTER II.

Government.

From the earliest times of which history furnishes authentic record, and in all countries inhabited by man, people have found it necessary to bind themselves together by civic regulations so that certain things may be done by all in common—in short, to establish some form of government.

Now, as has always been the case, there are certain things which, from their very nature, cannot be left to each individual to do, or not to do, as he may choose, or to do in his own way. First of all, there is the necessity of some means by which the weak may be protected from the strong. The individual must be protected in his life and liberty, and there must be some guarantee to him, that if he is industrious the enjoyment of the product of his labor will be secured to him. Human nature being imperfect, disputes and injustice are sure to arise. Hence comes the necessity of some power above the citizens and able to command their obedience, some power that can administer justice according to the rights and not according to the strength of individuals.

To thus control the actions of individuals, this power above the citizens, this government, must possess functions of three kinds. First, legislative power, or power to declare the rules of conduct to which the citizen must conform; second, judicial power, or power to interpret and declare the true meaning of these rules, and to apply them to the particular cases that may arise; and third, the executive power, or power to carry into

execution these laws, and to enforce the obedience of the citizens.

To the student nothing could be more interesting and instructive, than to trace how, as tribes and nations have progressed in civilization, government has advanced in its development. How, as men have progressed, first from the condition of savage hunters to the roving feeders of flocks, then to tillers of the soil with fixed places of abode, and finally to builders of cities teeming with trade, commerce and manufactures; how as men have thus improved in civilization and material well-being, their mutual duties and common interests have become more and more important and numerous, and government as controlling these interests and duties, has developed in form and improved in structure until it has become an all-powerful, complex machine, controlling in many ways the actions, and even the lives of its citizens.

For thousands of years, governments have been developing and changing in form and functions, and a very large part of the history of the nations of the globe is identified with the history of the development and changes of their governments. As new conditions and needs have arisen, governments have adapted themselves to them. In some cases this has been done peacefully, as in England, and in others violently, by revolutionary means, as in France. In some cases functions previously exercised have been relinquished, in others, new powers have been assumed; but in the majority of cases, the change has been merely in the manner of exercising this or that power.

All peoples have not the same characteristics, nor have they developed under the same conditions of climate, soil or situation. Different nations have, therefore, developed for themselves different forms of government. Yet these governments, however different in their structures and administration, are in all cases distinctly referable to four well defined types: Monarchy, Aristocracy, Democracy, and the Republic.

Monarchy.—A monarchy is a nation at whose head is a personal ruler, called King, Emperor, or Czar, who has control of the government, appoints the principal officers of state, and to whom in theory at least, these appointees are responsible for their actions. Thus England, Germany, Spain, Italy, Sweden, and others are monarchies. The sovereign holds his position for life, and usually acquires his throne by inheritance. Where the crown is nominally elective, as in England, kingship is practically hereditary, the regular line of descent being departed from only upon rare occasions.

The amount of power actually exercised, the responsibility borne by the sovereign varies widely in different countries, and upon the basis of these differences monarchial forms of government are classified under the two heads, Absolute and Limited Monarchies.

An Absolute Monarchy.—An absolute monarchy is one in which the sovereign or ruler is possessed of supreme power and authority, and controls absolutely, without limitation or interference, all the powers of government. His word is law and requires not the sanction of the people. His commands are absolute and require not the formality of judicial procedure, and are not necessarily in conformity with existing laws. Implicit obedience to his commands, however arbitrary, may be demanded, and there is no appeal. These are, theoretically, the powers of the absolute monarch. Practically, however, he is constrained to keep within fair bounds of justice and good policy, lest his subjects be goaded to rebellion and revolution. The absolute form of monarchy exists to-day in the empires of Russia and Turkey.

A Limited Monarchy.—A limited monarchy is one in in which the ruler, though at the head of the government, is not absolute, but is limited in his powers by the action of a body of men, selected by the people, who make the laws by which the nation is to be governed. The respective rights and powers of the sovereign and of the law-making body, are determined by a collection of rules, written or unwritten, col-

lectively known as the constitution. The constitution contains the fundamental law of the land. All acts of the government to be valid, must be constitutional, that is to say, in conformity with the rules laid down in the constitution. For this reason limited monarchies are also known by the name of Constitutional Monarchies.

England is the most conspicuous example of a limited or constitutional monarchy. In consideration of our former connection with her, and the extent to which we have derived our ideas of government from her political institutions, it will be of great assistance to us if we stop for a moment to consider her government, before proceeding to a study of our own.

The sovereign of England is termed King or Queen. Originally possessed of almost absolute power, the English ruler, at the present day possesses very little actual power and influence, much less in fact than the people of the United States have entrusted to their President. The constitutional history of England is largely the narrative of the successive steps by which the people have wrested from royal hands and taken under their own control, the powers of government.

The rights of the English people in the participation of their own government are not contained in the written document, such as we possess in our constitution, but rest upon established custom and precedent, and various charters wrested from their kings.

The English Parliament, or, to speak more exactly, the lower branch of the Parliament, called the House of Commons, rules the English people. The Parliament or law-making branch of the English government, is divided into two houses, the House of Lords, and the House of Commons. The House of Lords is, as its name denotes, composed mainly of members of the noble families of England, who owe their seat in that body to the chance of birth. Theoretically possessed of powers of legislation equal to those exercised by the lower and more numerous branch (the Commons), the Lords have in reality but a small voice in the control of public affairs. The House

of Commons is composed of members elected by the people. In this body reside almost all the powers of government. Its acts require the assent of the House of Lords and of the King, but this assent is almost wholly formal. The sphere of legislation allowed the English Parliament is unlimited, differing in this respect fundamentally from our Congress, which is limited in its legislative field by the Constitution. From the English Parliament is selected the "Cabinet" consisting of the principal executive officials, who guide the House in its legislation, and at the same time conduct the executive affairs of the nation. These ministers, as they are called, are appointed by the king from the party in the majority in the House of Commons. They are responsible to that body for all their actions, and retain their offices only so long as they retain the confidence and good will of the Commons.

An Aristocracy.—An aristocracy is a government in the hands of a select few, called the aristocracy, who transmit this authority to their children. There are to-day no aristocratic governments proper, though many nations exhibit aristocratic tendencies. In nearly all of the European countries, one branch, at least, of their legislatures is composed of members holding their seats on account of noble birth, thus admitting the aristocratic element into their governments.

Democracy.—A pure democracy is a government in which all the people rule directly, meeting in popular assemblies in which is determined by the votes of the majority how the government is to be administered. This form of government is obviously possible only in very small communities. Several of the Grecian states governed themselves after this manner. No perfect example of a nation with this form of government can be said to exist at this time. The nearest approach to pure democracy is found in certain cantons of Switzerland. The Roman historian Tacitus tells us that the early Germans governed themselves in a purely democratic manner, and the first governments of several of our American colonies were of the democratic type. When we come to the

study of local government in the United States we shall see the democratic form followed in the New England Town Meetings.

Republic.—A republic is a democracy adapted by means of the introduction of the representative principle, to the government of a large and widely separated people. Under this form of government the people rule themselves, not directly, as in a democracy, but through agents or representatives of their own selection. The participation of the people in their own government consists therefore merely in the choice of officers to represent them and carry out their wishes. There exist at present several republics, the tendency seeming to be for nations to approach more nearly this form of government. France has been, since 1870, the best European example of a republic. Our own government—the United States of America—is to us the most interesting and important example of a republic.

Popular Government.—By the word 'popular' is meant, of or by the people, and by popular government is to be understood a government in the administration of which the people as a whole participate. Every change by which new and greater political powers are given into the hands of the common people is considered a step towards the full realization of popular government. During the last one hundred years great strides have been made in this direction by all European nations except Turkey and Russia. The extent to which this movement towards popular control of government can be safely and successfully carried is a question of very great importance. To a very large extent it depends upon the intelligence, previous training, and natural political ability of the people who are to be entrusted with their own government.

CHAPTER III.

The Functions of Government.

Broadly speaking, the functions performed by government are of a threefold order: the establishment, interpretation, and enforcement of laws. A division of government into three branches is thus called for: the legislative, the judicial and the executive. The manner in which these departments are related to each other, the extent to which they are vested in the same hands, and the degree in which they are separate from each other and independent in their workings, differ in different countries. In England, as we have seen, the executive and legislative functions are closely united. In our government, as we shall see when we come to consider its structure, complete independence of the three departments has been aimed at.

All statesmen agree that a good government should possess ample power to interpret its own laws, and sufficient strength to fully enforce them. When we come, however, to the question of what are the proper subjects for control by government, and what for free management by individuals, we reach a subject upon which writers and thinkers have been unable to agree.

Under the great question, over how broad a field it is expedient and right to extend the activities of government, are embraced many of the great topics at present agitating the public mind. Difference upon this point has been one of the underlying causes of the existence of political parties in the United States, and has furnished one of the real springs of

our history. Communism, socialism, and anarchy, may be embraced under this question. This it is that makes the study of the principles of government, especially in the United States, so important to every one who would understand the political life around him, and be able to form an intelligent decision upon the questions of the day. Shall the nation or the state own and manage the railroads, the telegraph lines, and the canals? Shall education receive the support of the state? Shall the employment of women and children in mines and factories be regulated by law? Shall the city own its own street railways, its markets, its water and gas supply, its telephones, and its water fronts? Shall this or that duty be delegated to the city or to the state, or shall it be left to the chance performance of individuals or corporations? These are some of the many questions of supreme importance that meet us at every point, and the better we understand the true nature and structure of our government, the better shall we be able to give intelligent answers.

Among the many functions of government, there are many so obviously necessary to the existence of a nation, however organized, that there is no discussion concerning the expediency of their exercise by the state. We may, therefore, group governmental duties under two heads: the necessary, and the optionable; or, as Professor Wilson has named them, the *Constituent* and the *Ministrant*.[1] Under the first head is embraced all those functions which *must* exist under every form of government; and under the second title those "undertaken, not by way of governing, but by way of advancing the general interests of society." The following is Professor Wilson's classification:

I. The Necessary or Constituent Functions.—

(1). The keeping of order and providing for the protection of persons and property from violence and robbery.

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[1] Wilson, *The State*, Section 1232.

(2). The fixing of the legal relations between man and wife, and between parents and children.

(3). The regulation of the holding, transmission, and interchange of property, and determination of its liabilities for debt or for crime.

(4). The determination of contract rights between individuals.

(5). The definition and punishment of crime.

(6). The administration of justice in civil causes.

(7). The determination of the political duties, privileges, and relations of citizens.

(8). Dealings of the state with foreign powers; the preservation of the state from external danger or encroachment, and the advancement of its intellectual interests.

II. Optional or Ministrant Functions.

(1). The regulation of trade and industry. Under this head we must include the coinage of money, and the establishment of standard weights and measures, laws against forestalling, engrossing, the licensing of trades, etc., as well as the great matters of tariffs, navigation laws, and the like.

(2). The regulation of labor.

(3). The maintenance of thoroughfares, including state management of railways, and that great group of undertakings which we embrace within the comprehensive terms 'Internal Improvements,' or 'The Development of the Country.'

(4). The maintenance of postal and telegraph systems, which is very similar in principle to (3).

(5). The manufacture and distribution of gas, the maintenance of water-works, &c.

(6). Sanitation, including the regulation of trades for sanitary purposes.

(7). Education.

(8). Care of the poor and incapable.

(9). Care and cultivation of forests and like matters, such as stocking of rivers with fish.

(10). Sumptuary laws, such as 'prohibition' laws.

Under this second head have been included by no means all of the functions whose exercise by the government has been attempted or proposed, but they show the principal ones, and serve to indicate the nature of the optional field of governmental activity.

CHAPTER IV.

Colonial Governments; Their Relation to Each Other, and to England.

To understand clearly the early history of our country; to appreciate the reasons for the grievances of the colonists against their mother country; and to gain an intelligent idea of the events of that most critical period of our history, when the colonies, then free, were in doubt as to the nature of the federal government they should adopt; properly to understand all these facts, it is of essential importance that we should gain a correct knowledge of the condition of the colonies during those times, their relations to one another, their governmental connection with and attitude towards England.

The thirteen American colonies, which in 1775 dared defy the might of Great Britain, and which in a stubborn struggle were able to win their independence, were settled at various times, and by colonists actuated by widely different motives. At the time of the beginning of their resistance to the oppressive acts of their mother country, they were, in their governments, entirely separate from and independent of each other. "Though the colonies had a common origin, and owed a common allegiance to England, and the inhabitants of each were British subjects, they had no direct political connection with each other. Each in a limited sense, was sovereign within its own territory. . . . The assembly of one province could not make laws for another. . . . As colonists they were also excluded from all connection with foreign states. They were known only as dependencies. They

followed the fate of their mother country both in peace and war. . . . They could not form any treaty, even among themselves, without the consent of England."[1]

All the colonies did not bear the same relation to the English government. Owing to the different manner in which the right of settlement, and occupancy of the soil had been obtained from the king, the colonies had obtained different rights of government, and were placed under different obligations to the crown. There came thus to be three types of colonial governments; the provincial or royal, the proprietary, and charter governments.

I. Provincial Colonies.—Those colonies which possessed a provincial form of government were royal colonies, being governed almost entirely by England, as she governs many of her colonies to-day. At the head of each was a Governor appointed by the King of England. He was assisted by a council, also appointed by the king. The constitution and laws for this form of government were contained in the commission and instruction given to the Governor by the English government. By them the Governor was empowered to summon a representative assembly. The legislative body consisted, then, of the Governor, his council, appointed by the king, and a lower house elected by the people. The Governor had the right of veto, and the power to dissolve the assembly. The legislature could make laws, provided they were not repugnant to the laws of England. These laws were subject to the approval of the Crown. The governor, with the advice of his council, could erect courts, appoint judges, levy forces, etc. From the highest courts in all the colonies an appeal lay to the English King in Council.

II. Proprietary Colonies.—The English King often gave to individuals large tracts of land in the New World. In addition to ownership of the soil, was given in many cases the right to establish civil government. These proprietors

[1] Story's *Commentaries on the Constitution*, Vol. I, p. 163.

had all the inferior royalties and subordinate powers of legislation. The proprietor could appoint or dismiss the governor, he could invest him with the power to convene a legislature, with power to veto its acts according to his wishes, and to perform all other powers of a governor. All laws made, those of Maryland excepted, were subject to the approval of the English Crown.

III. Charter Colonies.—Colonies under this form of government were so called from their possessing constitutions for their general political government. These written constitutions were charters obtained from the King, in which were granted to the people of the colony certain privileges and rights of self-government which the English government could not justly take away from them. One of the unjust acts that did much to arouse the colonists to resistance, was the attempt of the English government in 1774, to annul the charter of Massachusetts by the Regulation Act. In this act was contained a precedent that (as Curtis says) "justly alarmed the entire continent, and in its principle affected all the colonies, since it assumed that none of them possessed constitutional rights which could not be altered or taken away by an act of Parliament." The charters were very liberal, granting almost entire self-government. As in the royal colonies, the executive was a governor, and the law-making branch a legislature of two houses.

In Massachusetts the governor was appointed by the Crown, and had a veto power. The Council or upper branch of the legislature was chosen annually by the lower house, but the governor had a right of veto on their choice. The lower house was elected by the people. In Connecticut and Rhode Island the governor, council, together with the assembly were chosen annually by popular vote, and all officers were appointed by them. In these two the governor had no right of veto, and the laws before going into execution did not require the royal approval.

Seven of the original colonies began under proprietary governments—New York, Pennsylvania, Delaware, North and

South Carolina, Maryland and New Jersey. Of these, four —New York, New Jersey, North and South Carolina— became eventually provincial colonies, and Maryland was at one time a proprietary.

Three of the colonies, Massachusetts, Connecticut and Rhode Island, were settled under charters that were never surrendered. Three others, Virginia, Georgia and New Hampshire possessed charters for a while, but eventually became royal colonies.

Notwithstanding these diversities of government that have been pointed out, there were many features common to all the colonies. All considered themselves dependencies of the British Crown. All the colonists claimed the enjoyment of the privileges and rights of British-born subjects, and the benefit of the common law of England. The laws of all were required to be not repugnant to, but, as nearly as possible, in conformity with the laws of England. In all the colonies local legislatures existed, at least one branch of which consisted of representatives chosen by the people.

The general condition of the colonies at the time of the outbreak of the Revolutionary War, so far at least as concerns their governments, has now been given. What were the grounds upon which the colonists justified their resistance to the acts of English government?

In the first place, they claimed that their rights were received from, and their allegiance was due to the King, not to the Parliament. The colonists said the King was the only tie that bound them to England; that Parliament was composed of representatives from England alone, and therefore had powers of legislation only for England. Later, however, it was conceded that in matters of general interest to the whole United Kingdom, Parliament might exercise control, but that concerning all matters of domestic and internal interest, and of concern only to themselves, it was the right of their own legislatures to legislate, and that under this head came taxation.

Says Story:[1] "Perhaps the best summary of the rights and liberties asserted by all the colonies is contained in the celebrated declaration drawn up by the Congress of nine colonies assembled at New York in October, 1765 (Stamp Act Congress). That declaration asserted that the colonists 'owe the same allegiance to the Crown of Great Britain that is owing from his subjects born within the realm, and all due subordination to that august body, the parliament of Great Britain.' That the colonists 'are entitled to all the inherent rights and liberties of his (the King's) natural born subjects within the kingdom of Great Britain. That it is inseparably essential to the freedom of a people, and the undoubted rights of Englishmen, that no taxes be imposed on them but with their own consent given personally or by their representatives.' That the 'people of the colonies are not, and from their local circumstances cannot be represented in the House of Commons of Great Britain. That the only representatives of these colonies are persons chosen by themselves therein; and that no taxes ever have been or can be constitutionally imposed upon them but by their respective legislatures, and that trial by jury is the inherent and invaluable right of every British subject in these colonies.'"

In opposition to these views, the English government held that Parliament had the authority to bind the colonies in all matters whatsoever, and that there were no vested rights possessed by the colonies, that could not be altered or annulled if Parliament so desired.

At the beginning of the Revolutionary War, complete independence was not claimed by the colonies. It was not until July 4, 1776, that they were driven to a declaration of full and entire independence and self-government. By this declaration the colonies threw off their colonial character, and assumed the position of states. This they did by simply taking into their own hands the powers previously exercised by

[1] *Commentaries*, Vol. I, p. 175.

the English King and Parliament. In the state constitutions which many colonies formed during the year, their old colonial forms of government were closely followed. Connecticut and Rhode Island, in fact, merely declared their allegiance to England absolved, and retained unchanged their old charters as their fundamental law. In Connecticut no other state constitution was adopted until 1818, nor in Rhode Island until 1842.

CHAPTER V.

Steps Toward Union.—Articles of Confederation.

Previous to 1774 the thirteen English colonies in America had had no political or governmental connection with each other. Any attempt on their part to unite without the consent of the English King or Parliament would have been considered an act beyond their powers and as insubordination towards the English government.

New England Confederation.—In 1643 there was formed a union of the four colonies of Connecticut, New Hampshire, Plymouth, and Massachusetts Bay, termed the "New England Confederation," which lasted forty years; but this was merely a union for mutual protection against their common foes, the French, the Dutch, and the Indians, and not for joint legislation or government. It was a defensive alliance.

The Albany Convention.—(Franklin's Plan.) In 1754, however, there was held a meeting of the colonies of New Hampshire, Massachusetts, Rhode Island, Connecticut, New York, Pennsylvania, and Maryland, called the "Albany Convention," in which was proposed a union of all the colonies under one government. Benjamin Franklin, the chief promoter of this scheme, drew up an elaborate constitution which was to be adopted. According to this plan there was to be a chief executive, elected by the king, and a council of 48 members, to be chosen by the legislatures of the several colonies. This scheme failed to obtain either the consent of the king or of the colonies themselves. It was too much of a union to suit the king, and not enough for the colonies.

The Stamp Act Congress.—The indignation aroused by the attempt of England to tax her colonies without allowing them a voice in the Parliament which imposed such taxes, gave rise in 1765 to a meeting of delegates from eight of the colonies. This assembly was called the "Stamp Act Congress." The obnoxious Stamp Act was repealed, but England continued to impose other taxes.

First Continental Congress.—An invitation was sent out by Virginia to all the colonies, calling a meeting of delegates to consider what could be done by their united action to resist their common grievance. Thus met the "First Continental Congress" in 1774, in which all the colonies but Georgia were represented. This Congress adopted a declaration of rights and grievances. The colonies maintained that as long as they were unrepresented in the English legislature (Parliament), taxes should be imposed only by their own legislatures; also, that they were entitled to the rights, liberties, and immunities of free, natural-born subjects within the realm of England.

The Second Continental Congress.—On May 10, 1775, assembled the Second Continental Congress, in which all the thirteen colonies were represented. The battle of Lexington had then been fought, and blood had been shed. Though the colonies had as yet no intention of throwing off all connection with England, they were now prepared to resist with arms any invasion of their rights. The work performed by this body has been concisely and forcibly stated by Schouler.[1] He says: "Thus originated that remarkable body known as the Continental Congress, which, with its periodical sessions and frequent changes of membership, bore for fifteen years the symbols of Federal power in America; which, as a single house of deputies acting by Colonies or States, and blending with legislative authority, imperfect executive and judicial functions, raised armies, laid taxes, contracted a

[1] *Hist. U. S.*, Vol. I, p. 13.

common debt, negotiated foreign treaties, made war and peace; which, in the name and with the assumed warrant of the thirteen colonies, declared their independence of Great Britain, and by God's blessing accomplished it; which, having framed and promulgated a plan of general confederation, persuaded these same thirteen republics to adopt it, each making a sacrifice of its sovereignty for the sake of establishing a perpetual league, to be known as the United States of America, a league preserved until in the fulness of time came a more perfect Union."

The acts of this Congress were the *first legislative acts by the joint action of the colonies.*

The Second Continental Congress was essentially a revolutionary body. That is to say, the authority for its acts rested upon no definite grant of powers by the colonies, but was assumed by it to meet the crisis of war. Properly speaking, it could hardly be called a government. It was more in the nature of a directing advisory committee. Its commands possessed a recommendatory character only, and it was entirely without executive officers, or legal control over either individuals or the colonies.

The Articles of Confederation.—A stronger central power than that afforded by the Continental Congress was seen to be a necessity. Accordingly, in 1777, there was drawn up a scheme of union embraced in a paper termed "The Articles of Confederation." These articles, though adopted as early as 1777, did not go into effect until 1781, the provision being that they should not be considered as in force until ratified by *all* the colonies, and several refused to ratify until all state claims to western territory were relinquished in favor of the National Government.

Elements Tending to Separation and Those Tending to Union.—We must remember that this was a union of thirteen previously separate colonies. The facts which had tended to keep them apart had been the difficulty of travel and communication between the colonies, the lack of

commercial intercourse, but more than all, their local jealousies. The small States feared the larger; commercial jealousies were very keen. In 1756 Georgia and South Carolina actually came to blows over a dispute as to the navigation of the Savannah river. Other disputes about boundaries were frequent. Colonies with good harbors and seaports desired to keep the benefits of them exclusively to themselves. At that time, too, the people of the thirteen colonies were far more widely separated in their forms of government, their industrial habits and social customs than they now are. On the other hand, the old facts which tended to urge on a common union between them were common race, language, and nationality, many similar political institutions, and, most of all, common interests and a common peril.

The Purposes of the Confederation.—The purposes of this Confederation are best stated by giving Article III of the Articles:

"The said States hereby severally enter into a firm league of friendship with each other for their common defense and security of their liberties and their mutual and general welfare, binding themselves to assist each other against all force offered to or attacks made upon them, or any of them, on account of religion, sovereignty, trade, or any other pretext whatever."

Scheme of Government under the Articles of Confederation.—The Articles of Confederation established a framework of government for the confederated colonies, which government was to control those matters that experience had shown could be executed only by united action. As a scheme of government it was no better than a makeshift. It was an effort to form a federal power without diminishing the powers of the States—an effort "to pare off slices of state government without diminishing the loaf." That such a union could be perpetual, as the scheme professed, was impossible.

Under these Articles of Confederation the sole functions of the federal authority, legislative, executive, and judicial, were vested in a Continental Congress, consisting of a single house of delegates, who voted by States, and were appointed annually in such a manner as the respective States directed. Each State was entitled to not less than two nor more than seven delegates, a majority of whom decided the vote of the State in question. The executive functions were largely performed by a Committee of States, which was empowered to sit during recesses. For all important measures the vote of every State was required. The vote of all thirteen was required for an amendment.

Defects of the Articles of Confederation.—In this scheme of union there were many fatal defects. The principal of these defects were—

1. The want of some compulsory means of enforcing obedience to the acts of Congress. The articles provided neither an executive power nor a national judiciary worth mentioning. As one writer has said: "Congress could declare everything, but do nothing." A single colony could with impunity disregard any decree of the Congress.

2. The large vote required to pass all important measures.

3. The absence of the right to regulate foreign commerce, and make duties uniform, and to collect those duties. This defect, as we shall find, was one of the most vital, and more than any thing else decreed the failure of the practical working of the Confederation, and showed the necessity of a better and stronger National government.

4. The virtual impossibility of amendment. Since a unanimous vote was required, the selfish interest of one State could, and did, stand in the way of an amendment beneficial and necessary to the other twelve.

5. There was no power to enforce treaties. Foreign countries recognized this, and therefore refused to enter into any treaties with us. Washington said: "We are one nation to-day, and thirteen to-morrow. Who will treat with us on such terms."

England refused to carry out the conditions of the treaty of 1783, and continued to keep troops on our Western borders.

6. The central authority had insufficient power to control disputes arising between the States.

7. The lack of a Federal judiciary.

8. Lack of power to collect taxes, or to raise revenue to defray even the ordinary expenses of government. This was the most striking and important defect of them all. The whole power given to Congress under this head was the power "to ascertain the sum necessary to be raised for the service of the United States, and apportion the rate or proportion on each State." The collection of such taxes was left to the States themselves, and if they refused (as they frequently did) the Federal Government had no power to compel them.

Our present better government was "wrung from the grinding necessities of a reluctant people."

Adoption of the Constitution.—Actual hostilities ceased in 1781. In 1783 peace with England was declared, and the independence of the colonies was achieved. The war left the American people with an empty treasury, and a country drained of its wealth and impoverished by the exhaustive struggle. It left us with a large national debt, both to our own citizens and friends abroad, and most of all, left us with an army of unpaid patriotic soldiers. And no sooner had foreign danger been removed than domestic troubles arose which filled all with gloomy forebodings for the future. With the loss of that cohesive principle which common danger supplied them, the colonies now began to fall apart. Even during the progress of the war the weakness of the Union had shown itself. Washington unhesitatingly declared that it was the lack of sufficient central authority that caused the prolongation of the war. One instance will show how weak was the Federal authority. During the summer of 1783, when Congress was at Philadelphia, some eighty deserters from the army so threatened Congress as to force a removal of our

Federal capital from that place to Princeton. The Continental finances were in a deplorable condition. Congress could not even collect sufficient taxes for the payment of the interest on the public debt. The States could, and often did, refuse to pay their proportion of taxes imposed upon them by Congress. Congress made a last attempt, in 1785, to raise a revenue by a tax on imported goods, but this measure failed, New York refusing to ratify. Congress, indeed, did not collect one-fourth of her demands. Commerce was going to ruin. England refused to allow our country the rich trade with the West Indies. To these troubles were added the mutual jealousies and selfishness of the States. Each of them tried to attract commerce to itself, and passed laws hurtful to the other States.

The people in Massachusetts were in insurrection. The French minister wrote to his country: "There is now no general government in America—no head, no Congress, no administrative departments."

For all these evils the limited and imperfect powers conferred upon the Federal Government by the articles of Confederation afforded no adequate remedy. Even the Constitutional Congress was now in danger of breaking up. States, to save expense, neglected to send delegates, and repeated appeals had to be made to get representation from nine States so as to pass important measures. A better union was seen by all thoughtful citizens to be necessary, but very difficult to obtain, owing to inter-state differences. The idea of having a convention separate from the Congress, whose work should be the framing of a stronger government, gradually gained ground.

The Constitutional Convention was obtained in a roundabout way, and only after repeated failures. The first attempt to obtain an assembly of representatives was made at Annapolis, Maryland. Only five States sent representatives, and the convention accordingly adjourned to Philadelphia, where in May, 1778, delegates from all the States, except Rhode Island, finally assembled.

CHAPTER VI.

Adoption of the Constitution.

The Constitutional Convention.—Fifty-five delegates were present. With scarcely an exception they were all clear-headed, able, and moderate men. Virginia sent Washington, Madison, Edmund Randolph; Pennsylvania sent Benjamin Franklin, Robert Morris, and James Wilson; New York sent Alexander Hamilton; New Jersey, Patterson; and South Carolina, the two Pinckneys. Washington was chosen President of the Convention. Two rules were adopted: 1st, proceedings were to be secret, and 2d, one vote was to be given to each State, thus making it of no importance whether a State had a large or small delegation.

Though the delegates had thus assembled to form a better and new union, they differed widely in their views as to what changes were necessary, and as to what powers should be given to the Federal Government, and what retained by the States. Some desired merely a change of the existing Articles of Confederation, more power being granted, however, to the Federal Government; while others wished for an entirely new Constitution.

The convention at once divided into two parties. The one representing the small States, such as New Jersey and Delaware; and the other, the larger States, such as Virginia, New York and Massachusetts. The plan brought forward by the party of the large States was that presented to the convention by Edmund Randolph, of Virginia, and generally known as the National or Large State Plan. This plan proposed a congress

of two houses, having power to legislate on all National matters, and to compel obedience on the part of the States. Representation in both houses was to be based on population, thus giving to the larger, and more populous, States the control of both branches of the legislature; and, also, since by this scheme the president, executive officers, and judges were to be appointed by Congress, control of the whole administration of the new government.

On behalf of the small States, Patterson, of New Jersey, introduced what is called the New Jersey plan. By this plan the old Federal Congress was to be continued with its single house of legislature, and equal State vote.

The great point upon which the two plans differed, was as to how representation in the legislature should be apportioned among the States; whether it should be according to population, and with two houses, or whether there should be but one house, in which each State should have an equal vote. The question was settled by a compromise. It was agreed that there should be a legislature of two houses, a Senate or upper and less numerous branch; and the House of Representatives, the popular and more numerous lower branch. In the Senate each State was to have an equal representation, thus putting the large and small States on an equal footing. On the other hand, in the House of Representatives representation was to be according to population, thus favoring the larger States.

Another point upon which the convention differed was concerning the slave trade; whether it should, or should not, be allowed to continue. This question was also compromised, it being agreed to permit its continuance for twenty years (until 1808), after which all importation of slaves might be prohibited.

Yet another point in dispute was whether the slaves should, or should not, be counted in estimating the population of the States, in order to determine the number of representatives to which each State should be entitled. This likewise was

compromised. It was agreed that five slaves should be counted equivalent to three white men.

These three main points being settled by compromises, other parts of the government, such as a single chief executive, a Federal judiciary, and the decision as to what powers should be given to the President, what to the Senate, and what to the House, were more easily arranged, and the convention adjourned September 17, 1787, having been in session a little over four months. Thus was prepared the Constitution under which we are now living—an achievement declared by Guizot to be the greatest work of its kind, and by Gladstone to be the greatest work ever struck out at one time by the hand of man.

The Constitution having been agreed to in convention, it was now submitted to the vote of each of the colonies for acceptance. It was decided in this convention that it should be considered as ratified, and should go into effect as soon as accepted by nine of the thirteen States.

The adoption or rejection of the Constitution now became a question which claimed the entire attention of the States, and it is during this contest that we find the origin of the first political parties in the United States. Those favoring the adoption of the Constitution were called "Federalists" and those opposing it "Anti-Federalists."

Arguments For and Against Adoption.—The Federalist party was composed of those men who were desirous of a strong central government, and for this reason favored the Constitution. This party was especially strong in New England, largely because New England, being the commercial part of the colonies, had had the lamentable weakness of the old confederation brought home to them the more forcibly by the disorganization and loss of commerce which the Continental Congress had been unable to regulate.

The Anti-Federalists were those who wished the State governments to be kept strong, and that there should be a comparatively weak central government.

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The argument used by the Federalists for the adoption of the Constitution was, that only by correcting all those defects of the Confederation which have been pointed out, could order and prosperity be restored to the country. They said that the Constitution, being a series of compromises, could not please everyone in all respects, but that it was the best that could be obtained under the circumstances. Their arguments appeared in a remarkable collection of eighty-five essays, called the "Federalist," written by Alexander Hamilton in company with John Jay and James Madison. In these were explained all the points of the Constitution, and to this day they remain the best exposition of the Constitution ever written.

The objections raised by the Anti-Federalists were many. In the first place, it was of course objected that it gave to the central government too much power; that state government and State liberty would be crushed out. The State was then as dear to the citizen as is the National Government to us to-day. Patriotism was then devotion to the State. The colonists had suffered so much from control over their state governments by an outside strong government, that they were fearful of again putting themselves under a strong national government though of their own making. In warning terms it was declared it would be a government founded upon the destruction of the governments of the several States. They said, "Congress may monopolize every source of revenue, and thus indirectly demolish the State governments, for without funds they cannot exist." These elements of State love and jealousy of the Federal power are of the utmost importance in studying our history. We see them running through all our life as the main causes of division between political parties. (See later chapter on "Introduction to History of Political Parties.")

Another objection was, that the Constitution contained no definite "bill of rights" recognizing and guaranteeing fundamental personal liberties, such as freedom of speech, liberty of the press, assurance against unjust arrest, the right to bear arms, and trial by jury in civil cases, etc. This class of objections was satisfied by the adoption of the first ten constitutional

amendments. It was also claimed by those opposed to the ratification, that inasmuch as the Constitution placed no limit to the number of terms which a President might serve, one man might become so powerful as to obtain a life-tenure of office, and thus the government would degenerate into a monarchy. To show how exaggerated were the fears during this critical period of our history, we have the report that it was actually claimed and believed by many at that time that the Federalists had the secret intention of inviting over to our country some European prince who should rule as king. Patrick Henry cried, "We shall have a king; the army will salute him monarch." Though not fixed by the Constitution, it has been since the time of Washington the invariable rule that no man shall be elected for more than two terms. The friends of President Grant attempted to have him nominated for a third time, but so strong was this prejudice that, popular as he was at that time, the plan failed.

For nine months the struggle was waged fiercely in the States, but the Federalists prevailed. In June, 1788, the ninth State ratified, and adoption was assured. Congress fixed the first Wednesday in January for the election of presidential electors, the first Wednesday in February for the meeting of the electors and election of the President, and the first Wednesday in March, 1789, for the inauguration of the President and the beginning of the new government. This last date fell upon the 4th of March, which date has from that time served as the day for the inauguration of our presidents. Owing to a delay in the assembling of the new Congress, Washington was not inaugurated, nor our present government instituted, until April 30, 1789.

Thus was founded our present government, which has stood the test of a century. When adopted there were thirteen States; now there are forty-four. The inhabited area was then the narrow strip between the Atlantic Ocean and the Allegheny Mountains, with a population of scarcely 3,000,000. Now the United States stretches 3,000 miles from ocean to ocean, and contains a population of over sixty millions.

CHAPTER VII.

Presidential Succession.

The provisions of the Constitution regarding the Presidential succession, in case of the death or resignation of both President and Vice-President, are: "In case of the removal of the President from office, or of his death, resignation, or inability to discharge the powers and duties of the said office, the same devolve on the Vice-President, and the Congress may by law provide for the case of removal, death, resignation, or inability both of the President and Vice-President, declaring what officer shall then act as President, and such officer shall act accordingly until the disability be removed or a President shall be elected." (Article II, section 6.)

In pursuance of the power thus granted to it in the last half of this section, Congress in 1792 passed an act declaring that in case of the death, resignation, etc., of both the President and Vice-President, the succession should be first to the President of the Senate and then to the Speaker of the House.

This order was changed by the act of 1886, which provided that the succession to the presidency should be as follows:

1. President.
2. Vice-President.
3. Secretary of State.
4. Secretary of the Treasury.
5. Secretary of War.
6. Secretary of the Navy.
7. Postmaster General.
8. Secretary of the Interior.

9. Attorney General.

In all cases the remainder of the four-years' term shall be served out. This act also regulated the counting of the votes of the electors by Congress, and the determination of who were legally chosen electors.

NOTE.—The Constitution made no provision in case of a contested election, or when no one should be elected. Such a contingency seemed to have been overlooked in the framing of the Constitution.

CHAPTER VIII.

Election of Senators.

The provisions of the Constitution regarding the election of senators were as follows: "The Senate of the United States shall be composed of two senators from each State, chosen by the Legislature thereof, for six years; and each senator shall have one vote." (Article I, section 3, paragraph 1.) "The times, places, and manner of holding elections for senators and representatives shall be prescribed in each State by the Legislature thereof, but the Congress may at any time by law make or alter such regulations, except as to the places of choosing senators." (Article I, section 4, paragraph 1.)

Until 1866 this matter was left entirely to the States, as permitted by the section of the Constitution just given. In that year an act was passed by the Federal Congress regulating the election of senators by the State Legislatures. By it was provided that the Legislature of each State, which is chosen next preceding the expiration of the term of either of their senators, shall on the second Tuesday after assembling elect a senator in the following manner: Each House shall by open ballot (*viva voce*) choose some man for senator, and he who receives a majority of the total number of votes cast in such House is entered on the journal of that House. At noon on the following day the members of the two Houses convene in joint assembly, and the journal of each House is then read, and if the same person has received a majority of the votes of each House he is declared duly elected senator. But if not, the joint assembly then proceeds to choose by a *viva voce* vote of

each member present, a person for senator, and the person who receives a majority of all the votes of the joint assembly—a majority of all the members elected to both Houses being present and voting—is declared duly elected. If no person receives such a majority on the first day, the joint assembly meets at noon on each succeeding day during the session of the Legislature, and takes at least one vote until a senator is elected. Vacancies among representatives to Congress are filled in a similar manner. In case of a vacancy occurring in the Senate or House of Representatives during the recess of the State Legislature, the governor appoints a man to fill the place, his appointee holding until a successor shall be chosen in the above method by the State Legislature.

CHAPTER IX.

Congressional Government.

The Constitution created Congress and conferred upon it powers of legislation for national purposes, but made no provision as to the method by which these powers should be exercised. In consequence Congress has itself developed a method of transacting its business by means of committees.

The Federal Legislature consists of two Houses—the Senate, or Upper and less numerous branch, and the House of Representatives, or the Lower and more numerous popular branch.

The Senate is composed of two members from each State elected by the state legislatures for a term of six years, one-third of whom retire every two years. The presiding officer is the Vice-President. Early in each session, the Senate chooses a President *pro tempore*, so as to provide for any absence of the Vice-President, whether caused by death, sickness, or for other reasons.

The House of Representatives is at present composed of 332 members and four delegates from the Territories. These delegates, however, have no vote, though they may speak. The House is presided over by a speaker, elected at the beginning of each session. A quorum for business is, in either House, a majority.

Congress meets every year in the beginning of December. Each Congress lasts two years and holds two sessions—a long and a short session. The long session lasts from December to midsummer. The short session lasts from December, when Congress meets again, until the 4th of March. The term of office then expires for all the members of the

House, and for one-third of the Senators. The long session ends in even years (1880 and 1882, etc.), and the short session in odd years (1881 and 1883). Extra sessions may be called by the President for urgent business.

In the early part of the November preceding the end of the short session of Congress, occurs the election of Representatives. Congressmen then elected do not take their seats until thirteen months later, that is, at the reassembling of Congress in December of the year following, unless an extra session is called. The Senate frequently holds secret, or, as they are called, executive sessions, for the consideration of treaties and nominations of the President, in which the House of Representatives has no voice. It is then said to sit with closed doors.

An immense amount of business must necessarily be transacted by a Congress that legislates for nearly sixty-three millions of people, inhabiting a territory of over three and a half millions of square miles.

Lack of time, of course, prevents a consideration of each bill separately by the whole legislature. To provide a means by which each subject may receive investigation and consideration, a plan is used by which the members of both branches of Congress are divided into committees. Each committee busies itself with a certain class of business, and bills when introduced are referred to this or that committee for consideration, according to the subjects to which the bills relate. Thus, for example, affairs relating to Washington are handed over to what is known as the District Committee, a regular appropriation bill to the Committee on Appropriations, etc. These committees consider these bills carefully, frequently taking the testimony of outside persons to discover the advisability of each bill. The regular course through which a bill has to go before becoming an act—*i. e.*, to pass both houses and receive the signature of the President—is as follows: On Mondays there is a roll-call of the States, and members may then introduce in the House or Senate any bill they may desire. These bills are then referred by the presiding officer to appropriate committees. These committees, meeting in their

own separate rooms, debate, investigate, and, if necessary, as has been said, ask the opinion of outside persons. After such consideration bills are reported back to the House or Senate. But very few bills reach this stage, for the committee does not get time to report any save the more important ones, and thus the majority of them disappear, or, as the saying is, "are killed in committee." If a bill receives the approval of the committee it is favorably reported to the Senate or House, as the case may be—*i. e.*, the bill is returned, accompanied by a report advising the passage of the accompanying bill. If the bill is not approved by the committee, an unfavorable report is made; bills are seldom passed after such an adverse report. These reports which accompany the bills, are printed, often at great length, giving reasons for the proposed action in regard to the bills. When reported by the committee back to the house in which it was introduced, a bill is voted upon, and, if passed, is sent to the other branch. If passed there, it is ready for the President's signature; if vetoed, the bill is lost, unless passed over the veto by a two-thirds vote of both houses. But frequently one house, while not wishing to defeat a measure sent to it from the other house, may desire to change it by some amendment. If this is done, the bill, as amended, is sent back to the house from which it came, and if then agreed to as amended by it, it is sent to the President for his approval. Thus by repeated amendments it may pass to and fro between the House and Senate several times. In the House of Representatives, many bills are passed through all their various stages by a single vote, by what is known as a "suspension of the rules," which may be ordered by a two-thirds vote.

The Senate is now divided into between fifty and sixty committees, but the number varies from session to session. The principal committees are those on (1) Foreign Relations, (2) Privileges and Elections, (3) Judiciary, (4) Commerce, (5) Finance, and (6) Appropriations. The Senate selects the members for the different committees by ballot, though it is pretty well determined beforehand how each

committee shall be constituted by means of party caucuses (informal meetings of members of the same party to determine upon lines of action that will be supported by all). A committee is always composed of an odd number of members, and both political parties are always represented on every committee, though the majority is, in almost all cases, from that party which has the majority of the members of the Senate.

The House of Representatives is organized into sixty committees, ranging, in their number of members, from thirteen down. As regards party representation, their constitution is similar to that of the Senate Committees. The Committee of "Ways and Means," which regulates customs duties and excise taxes, is by far the most important.

Other important committees are those on (1) Elections, (2) Appropriations, (3) Judiciary, (4) Foreign Affairs, (5) Manufactures, (6) Commerce, (7) Labor. Every Representative is on one committee, and most of them on several. Unlike the custom in the Senate, in the House the presiding officer has the sole power of appointment, which makes him, next to the President, the most important and powerful government official. The chairman of each committee has, of course, a large power over affairs with which his committee is concerned, and for this reason it is often said that it is the chairmen of these committees who rule the land.

The precise amount of effective work done by Congress during the two sessions of the Fiftieth Congress was as follows: There were 4,000 bills introduced in the Senate and 145 Senate joint resolutions; of this number 1,127 bills and joint resolutions passed the Senate, and 554 were either postponed indefinitely or referred to the Court of Claims, so that the total number on which final action was taken by the Senate was 1,681. The committee on enrolled bills examined 667 Senate bills and joint resolutions and sent them to the President and 591 became laws, the number of vetoes, including "pocket vetoes," being 76.

The House of Representatives passed 1,561 House bills and sent them to the Senate, and the Senate passed 1,347 of them,

leaving 214 to perish. The House passed 56 House joint resolutions and the Senate passed all of them but eight. The House passed, therefore, 2,284 House and Senate bills, and the Senate passed 2,522.

The first session of the Fifty-first Congress (1889–90) was, with one exception, the longest ever held.[1] During the session there were introduced in the House 12,402 bills and joint resolutions, and in the Senate 4,570, making a total of 16,972. The total number of acts passed was 1,335 as against 1,790 for *both* sessions of the Fiftieth Congress. Of these 881 were pension bills.

Congress ordinarily assembles at noon, and remains in session until 4 or 5 p. m., though towards the end of the term it frequently remains in session until late in the night. The first thing upon assembling in the morning is prayer. On Mondays, as stated, there is next a roll-call of States for the introduction of bills. Sometimes a committee is instructed to prepare and bring in a bill of its own, without waiting to have one introduced and referred to it. Reports from committees are heard during morning hours on Tuesdays, Wednesdays, and Fridays, and on Mondays after the introduction of bills. Friday is a day usually set apart for the consideration of private measures. On Saturdays Congress seldom sits.

There is still one feature of Congressional government which needs explanation, and that is the caucus. A caucus is the meeting of the members of one party in private, for the discussion of the attitude and line of policy which members of that party are to take on questions which are expected to arise in the legislative halls.

Thus, in Senate caucus, is decided who shall be members of the various committees. In these meetings is frequently discussed whether or not the whole party shall vote for or against this or that important bill, and thus its fate is decided before it has even come up for debate in Congress.

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[1] The longest session was the long session of the Fiftieth Congress.

CHAPTER X.

The Cabinet and Executive Departments.

We have seen that the functions of government are divided into three distinct classes, the legislative, the judicial, and the executive. The Constitution provides as to the methods for the exercise of the first two, but none for the third. The only reference in the constitution to executive departments is in Art. II, Sec. 2, where the President is given the power to require the opinion in writing of the principal officer in each executive department upon any subject relating to the duties of his office. The departments have in each case been created by an act of Congress and from time to time as convenience has demanded.

The duties of the executive are to enforce and apply the laws of the nation after they are made by the legislature and interpreted by the courts. This is the real business of government, by which the laws are put into effect, and the work of government is actually carried on. In the United States Government this power is placed in the hands of a body of men distinct from the legislative and judicial officers. At the head is the President, and hence his title of "Chief Executive." It is evident that he must divide up the vast amount of work to be done, and delegate it to others. Congress directs how this shall be done. For this purpose Congress has created nine executive departments (1) State, (2) Treasury, (3) War, (4) Navy, (5) Interior, (6) Post Office, (7) Justice, (8) Agriculture, (9) Labor.

These departments have been created as required by the growth of government duties. Three departments, the State,

Treasury and War, were created by the first Congress, in 1789. By the same Congress was created the office of Attorney-General of the United States, who, together with the Secretaries of the three departments, constituted President Washington's first cabinet. The Navy Department was added in 1798. Prior to that date, naval affairs had been managed by the War Department. A Post Office for the colonies was established by the Postal Act of Queen Anne's reign. The Post Office Department under the present government was established in 1789, but the Postmaster-General did not become a Cabinet officer until 1829. The Interior Department was created in 1849 by grouping together in one department several branches of the government service, which had formerly been distributed among the other departments. As early as 1839 the Patent Office, under the Interior Department, was intrusted with various duties concerning the agricultural interests of the country, among the chief of which was the distribution of seeds. In 1862 a separate Department of Agriculture was established, and these duties transferred to it. In 1889 the head of the Department became Secretary of the Department of Agriculture and a Cabinet officer. A Bureau of Labor under the Interior Department was created in 1884. In 1888 Congress constituted it a separate department, but did not make its head a Secretary, and therefore not a Cabinet officer.

The heads of the first eight of these departments together form a council of eight, called the "Cabinet," whose duty it is, in addition to the management of the departments, to advise the President on matters of importance. For this purpose regular meetings are held, at which the affairs of government are discussed, and lines of action decided upon. The cabinet is neither the creation of the constitution, nor strictly of law. The existence of a cabinet, however, was always taken for granted in the discussion and formation of the constitution. It is a creation of custom and has no powers other than of advice and counsel to the President.

The growth of executive and administrative business is not fully indicated by the increase in the number of departments. The growth within each department has been much greater. Separate bureaus and divisions have been created, which in some cases are, for all practical purposes, as independent and important as the departments themselves.

The organization of all the different departments is much the same. At the head of each is an officer appointed by the President, the President thus having control generally over the whole executive business of the government. These officers are called Secretaries, except in the cases of the Post Office Department, whose head is the Postmaster-General, and of the Department of Justice, whose head is the Attorney-General. In a number of the Departments there are also one, two, three or four assistant secretaries, according as the business of the departments requires. For convenience in the despatch of business, the departments are divided into bureaus, the bureaus into divisions, and the divisions into rooms, until, finally, the individual workers—the clerks—are reached. Each bureau and division has at its head an officer called Commissioner and Chief of Division, respectively. Each department and bureau, and, in some cases, the division also, has a Chief Clerk who has charge of the details of the administration, and immediate oversight over the clerks.[1] All work in one finely organized system. The clerk is responsible to his chief of division, the chief of division to his commissioner, the commissioner to the Secretary and he, finally, to Congress. Each man has his particular place in the system, and no one works at random.[2]

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[1] There are a number of officials and clerks who properly belong to no division or bureau, as, for instance, the librarian's private secretary and other clerical assistance in the Secretary's office, who are under his immediate supervision.

[2] This system is not always carried out perfectly in practice. In some cases an officer is termed commissioner who is more properly a chief of division, and *vice versa*. In other cases the title of commissioner or chief of division is represented by a more technical designation as Director of the U. S. Geological Survey, Comptroller of the Currency, etc.

The President and heads of departments appoint all officers in the executive departments. It is manifestly impossible for them to base their appointments upon personal knowledge. Hence has arisen the custom of filling almost all offices not controlled by the Civil Service Commission upon the recommendation of congressmen, each of whom controls for the most part the patronage of his own district. Only the Secretaries, Assistant Secretaries, Commissioners, and other chief officials are really appointees of the President on his own responsibility.

Prior to the first administration of Jackson the positions of government clerks in the departments were permanent. In 1828 Jackson inaugurated the so-called spoils system, which means that to the victor belongs the spoils. Only 74 removals had been made from 1789 to 1828. Jackson removed during the first year of his administration 2,000 clerks. Since then, until 1883, each party, on gaining control of the government, has removed almost all the clerks in office who were of the opposite political faith, replacing them with members of its own party. In 1883 was passed the Civil Service Act, by which it is provided that all future appointments of subordinate clerks in the executive departments are to be made only from those who have passed successfully an examination set by the Civil Service Commission created by the act.

The State Department.—The Department of State was the first department established. (Act of July 27, 1789.) There are three Assistant Secretaries. Their salaries are, Secretary $8,000, First Assistant $4,000, and the other two $3,500. The department is divided into seven bureaus, (1) Diplomatic, (2) Consular, (3) Archives and Indexes, (4) Accounts, (5) Statistics, (6) Rolls and Library, and (7) Claims.

The Secretary of State is charged, under the direction of the President, with the duties appertaining to correspondence with the public ministers and consuls of the United States, and with the representatives of foreign powers accredited to the United States; and to negotiations of whatever character

relating to the foreign affairs of the United States. He is also the medium of correspondence between the President and the chief executive of the several States of the United States; he has the custody of the great seal of the United States, and countersigns and affixes such seal to all executive proclamations, to various commissions, and to warrants for pardon, and the extradition of fugitives from justice. He is regarded as the first in rank among the members of the Cabinet. He is also the custodian of the treaties made with foreign states, and of the laws of the United States. He grants and issues passports. Exequaturs to foreign consuls in the United States are issued through his office. He publishes the laws and resolutions of Congress, amendments to the Constitution, and proclamations declaring the admission of new States into the Union. He is also charged with certain annual reports to Congress relating to commercial information received from diplomatic and consular officers of the United States.

The patronage of the Secretary at Washington is small, about sixty clerks, but that which concerns the diplomatic and consular service is important. To facilitate communications and negotiations with foreign nations, and to protect the interests of American citizens in foreign countries, the United States, in common with all civilized nations, has an elaborate system of representatives residing at the capitals of all the principal nations. This system is called the diplomatic service, and is under the charge of a separate bureau of the State Department. Communications and negotiations with foreign powers are generally carried on through them or through ministers of other nations stationed at Washington. These agents are called ministers and are of three grades (1) envoys extraordinary and ministers plenipotentiary, (2) ministers resident, (3) *chargés d'affaires*. These grades correspond to the lower grades of similar services in European countries. We have no grade corresponding to that of ambassador. The United States has ministers in about thirty-three countries. The chief legations are those of Great Britain, France, Germany

and Russia. The salary attached to each of these legations is $17,500. The social demands upon ministers are great, and, as a rule, the expenses of ministers have been more than their salaries. Ministers of foreign powers receive a much larger compensation than do ours.

To protect our commercial interests abroad, and our seamen and vessels in foreign ports, the United States has agents resident in all foreign sea-ports of any prominence. Their duties are numerous. They ship seamen, certify invoices, take testimony, examine emigrants, etc. They transmit to the State Department monthly reports concerning any matter of commercial or social interest occurring at their stations. These reports are published monthly by the department and have a wide gratuitous circulation. This system is called the consular service; and is also under the charge of a separate bureau. These agents, called consuls, are of three ranks and titles; (1) consul-generals, (2) consuls, (3) consular agents, of whom 180 are salaried, the rest being paid by fees. The names of the other bureaus indicate the nature of the duties performed by each.

The Department of State has been prominently before the people during the last two years in consequence of the Pan-American Congress,[1] composed of representatives from all American nations. This congress met in 1889, under the auspices of the State Department at Washington, to consider subjects of common interest, such as international arbitration, railroad and steamship communication, uniform money and commercial regulations. Various standing committees and commissions were provided for; and it is believed that through their efforts better commercial and social relations with the South American Republics will be established. The International Marine Conference, composed of representatives from

[1] The Proceedings of the Pan American Congress were published by the Department of State, and also in the *Tribune Monthly* for September, 1890. Articles upon the subject by Mr. Romero, the Mexican Minister, appeared in the *North American Review*, September and October, 1890.

all marine powers, likewise met at Washington under the auspices of the same department, and adopted a code of marine regulations for the guidance of all nations.

In foreign relations the department has been chiefly occupied of late in the attempted settlement of the right of the English and Canadians to capture seals in Bering's Sea and Straits, and of the rights of American and English fishermen[1] in the fishing grounds off the coast of New Foundland; in the conclusion of a new extradition[2] treaty with England, and of various treaties concerning trade with other nations.

The Treasury Department.—This department was created by act of September 2, 1789. There are two assistant secretaries. The department is divided into a large number of divisions, with the following chief officers: (1) The Comptrollers, (2) the Auditors, (3) Treasurer, (4) Register, (5) Commissioner of Customs, (6) Commissioner of Internal Revenue, (7) Comptroller of the Currency, (8) Chief of the Bureau of Statistics, (9) Superintendent of the Bureau of Engraving and Printing, (10) Director of the Mint, (11) Superintendent of the Life Saving Service, (12) Supervising-Surgeon-General of the Marine Hospital Service, (13) Supervising-Inspector-General of Steam Vessels. Other officers are, the Supervising Architect, Commissioner of Navigation, Solicitor of the Treasury, and Chairman of the Light House Board.

The mention of the various divisions indicates the importance and variety of the duties coming under this department. The Secretary is charged with the entire management of the national finances. He submits annually to Congress estimates of the probable revenues and disbursements of the Government, prepares plans for the improvement of the revenue and for the support of the public credit, and superintends the collection of the revenue. Two comptrollers pass

[1] See *Tribune Monthly* entitled "Our Continent, or America for the Americans."

[2] An excellent monograph upon the subject of Extradition, by Hon. J. B. Moore, has been published by the State Department.

upon all claims against the government and accounts received from the auditors. Six auditors examine and adjust accounts relating to the expenditures of the various branches of the government.

The Treasurer of the United States receives and keeps its moneys, disburses them on the Secretary's warrants, and manages the Independent Treasury System. The Independent or Sub-Treasury System was adopted by Congress in 1846. By this means the Treasury Department is independent of the banking system of the country; but has established sub-treasuries in the principal cities of the Union for the receipt and disbursement of public moneys. There are sub-treasuries in New York, San Francisco, Saint Louis, Chicago, Boston, Philadelphia, Baltimore, New Orleans and Cincinnati. For greater convenience moneys are also deposited at certain designated banks. Secretary Windom, however, began rapidly removing such deposits from the banks and announced his intention to cease the placing of deposits with any bank.

The Register of the Treasury is the official book-keeper of the United States. The Commissioners of Customs and of Internal Revenue have charge respectively of the collection of customs duties and internal revenue taxes. The Comptroller of the Currency has control of the national banks. The Chief of the Bureau of Statistics collects and publishes the statistics of our foreign commerce. In the Bureau of Engraving and Printing are designed, engraved and printed all government bonds, national bank notes, drafts, United States notes, etc., for which work about 1200 persons are employed. The director of the Mint has general supervision over all mints and assay offices. In addition to his annual report he publishes yearly a report on the statistics of the production of precious metals.

The titles of the other officers indicate the general duties of each. The whole department employs about 3,400 persons at Washington.

Some of the more important public questions coming within the province of the Treasury Department at the present time are (1) the Tariff, which has been settled for some years by the high tariff act of this Congress; (2) the silver question involving the gravest questions of finance, likewise settled for a time by the silver act of this Congress; (3) the purchase of bonds on the market as a device to reduce the surplus and prevent the accumulation of money in the Treasury; (4) the national banking system, whose basis is being removed by the rapid payment of the public debt; (5) the merits of the Independent Treasury System by which it is claimed that money is kept out of circulation and a stringency caused in the money market; and (6) the advisability of transferring the revenue marine service to the Navy Department.

The War Department.—The War Department was established August 7, 1789. There is one assistant secretary. The chiefs of the bureaus into which the department is divided, are officers of the United States Army, and a part of the military establishment. Their titles and duties are as follows. The Adjutant General of the Army, who has under him a large force of clerks, has the duty of issuing orders, conducting the correspondence of the department, and keeping the record. The Inspector-General inspects and reports upon the condition of the army at all points, and the accounts of the disbursing officers. The Quartermaster-General has charge of the clothing, quarters, and supplies, except food supplies, which form the province of the Commissary-General. The Surgeon-General has charge of the medical department, of the Army Medical Museum, and a special library. The Chief of Engineers has charge of the construction of fortifications, etc. The Judge-Advocate-General reviews the proceedings of courts-martial, and advises the Secretary on points of law. There are also a Paymaster-General, a Chief of Ordnance, and a Chief Signal Officer. The Chief Signal Officer has charge of the system of communicating with distant points by means of various systems of signals, the most noteworthy

of which is that of the heliograph, by which information is conveyed by the use of sun-reflecting mirrors. Communication has been established between points 125 miles distant by means of a heliograph with a reflecting surface of but twenty square inches.

The War Department answers more nearly than any other to the Department of Public Works found in other governments. All public improvements, the construction of docks, bridges, and the improvement of rivers and harbors, are under the supervision of army engineers. All arctic explorations and the explorations of our western territory, have been conducted by army officers under the direction of the Secretary of War.

The publication of war records is being made by a special board in the War Department. Thirty-five volumes have been published. It is estimated that there will be one hundred and nineteen volumes when the work is completed. The Secretary of War also has charge of the Military Academy at West Point, of certain national parks, and homes for disabled soldiers.

The army is commanded by a lieutenant-general under whom are three major-generals and six brigadier-generals. It consists of about 26,000 men distributed in the three divisions of the Missouri, the Atlantic, and the Pacific, of which the first contains four departments, the second, one, and the third, three. Congress appropriates and expends through the War Department $400,000 yearly on the National Guard for its armament and equipment. The aggregate of this reserve army regularly organized and uniformed is 106,500 men. The Secretary also details army officers to furnish military instruction at various colleges.

The principal questions to-day concerning the War Department are the advisability of strengthening our coast defences, and the lessening of the desertions in the army, which amount yearly to from ten to fifteen per cent. of the total strength of the army.

The Navy Department.—The Navy Department was established April 30, 1798. There is one assistant secretary. The routine work of the department is distributed among eight bureaus: (1) of Yards and Docks, (2) of Equipment and Recruiting, (3) of Navigation, (4) of Ordinance, (5) of Construction and Repair, (6) of Steam Engineering, (7) of Provisions and Clothing, (8) of Medicine and Surgery. The chiefs of the bureaus are officers of the United States Navy. There is a hydrographic office attached to the bureau of navigation, which prepares maps, charts and nautical books relating to navigation, and makes investigations concerning marine meteorology. This Department has charge of the Naval Observatory for which a new set of buildings is now being built at Washington. The Department publishes yearly, for the guidance of seamen, the nautical almanac, the preparation of which is intrusted to a separate bureau. The department also compiles and publishes naval records of the recent war, and has charge of the Naval Academy at Annapolis, Maryland. The Officers of the Navy upon the active list include one admiral, one vice-admiral, six rear-admirals, and ten commodores. The naval force includes 10,000 officers and men, together with 2,000 marines. The number of vessels of the United States Navy when all the ships now authorized are completed, excluding those which by the process of decay and the operation of law will by that date have been condemned, will comprise 11 armored and 31 unarmored vessels. The five stations maintained are the Asiatic, European, North Atlantic, South Atlantic, and Pacific. The chief matter of present public interest concerning this department is the creation of a new navy by the construction of modern steel vessels. This new policy was begun in 1882.

The Interior Department.—The Interior Department was created in 1849, to take charge of various duties not properly belonging to any of the existing departments. There are two assistant secretaries. The chiefs of the bureaus into which this department is divided, and their respective duties are as follows:

The Commissioner of the General Land Office has charge of all the public land of the government, its care, supervision, and sale or distribution. In another chapter we give further details concerning the operations of this important bureau.

The Commissioner of Pensions has charge of the granting of pensions to old soldiers and sailors. He has a large force at Washington. There are eighteen pension agencies in different parts of the country. In 1808 the United States assumed all the state pension obligations. The act of 1818 gave pensions to all who had served nine months in the Revolutionary War; other wars were afterwards included. The acts of the period beginning 1862 have enormously increased the amount paid. The report of the Commissioner for 1890 shows that at the close of the fiscal year of 1889 the number of pensioners was 537,944, and the annual expenditures for pensions $105,528,180.38.

The disability pension law passed June 27, 1890, will greatly lengthen the pension list and increase the annual expenditures. The present Commissioner says in his last report that "it is believed that there are probably over one hundred thousand claims in this office which can be properly allowed under the provisions of these regulations. The act of June 27, 1890, is the first disability pension law in the history of the world which grants to soldiers and sailors pensions for disabilities which are not proven to have been incurred in the service and in line of duty." Speaker Reed of the House characterized it as "the most generous piece of pension legislation ever passed by any nation on earth."

The Commissioner of Patents has charge of the granting of patents. Up to 1793 the granting of letters-patent was given to a board consisting of the Secretary of State, Secretary of War and the Attorney General, the records and models being kept in the Department of State. In 1793 the granting of patents was given exclusively to the Secretary of State. In 1821 the clerk of the State Department who examined applications for patents received the title of Super-

intendent of the Patent Office, and on July 4, 1836, the Patent Office was created as a separate bureau and a Commissioner of Patents created.

About 24,000 patents are issued annually. There is an Assistant Commissioner-in-chief, an Examiner of Interferances, three Examiners-in-chief, thirty-eight Principal Examiners, and a large force of assistant examiners for different branches. Patents run for seventeen years. The annual receipts of the bureau from fees more than equal the expenditures, and the office now has a surplus of several millions to its credit in the Treasury.

The Commissioner of Indian Affairs has charge of all matters concerning the Indians, their education, government and support. There are 239 Indian schools supported by appropriations made by Congress, 147 of which are controlled directly by the Indian Bureau. The average attendance of pupils at these schools is between eleven and twelve thousand. The number of Indians in our country (not counting those of Alaska) is about 250,000. They occupy or have control of about 116,630,106 acres.

The Bureau of Education was originally established as an independent Department by act of Congress, approved by the President March 2, 1867. By an act of Congress which took effect July 1, 1869, this Department was changed to an Office or Bureau in the Interior Department. The duties of this Bureau are to collect and diffuse information regarding schools, methods of instruction and school discipline, etc., and otherwise to promote the cause of education. The results of the investigations here carried on, though with a small clerical force, are of the utmost value to all educators, and such is the extent to which the merit of the work and publications of this office are recognized by the leading educators of the country, that, in their opinion, the Bureau should be re-established as a department, and its chief be made a member of the President's cabinet. The publications of the Bureau consist of (1) *Annual Reports*, which set forth statistics and general infor-

mation concerning the educational systems of the States, Territories, larger cities, universities, and colleges; professional, special, and scientific schools, academies, preparatory schools and kindergartens, with a summary of the progress of education in foreign countries; (2) *Special Reports*, on subjects pertinent to the times; (3) *Occasional Bulletins*, on matters of current educational interest; (4) *Circulars of Information*, on important questions of educational work or history, which are issued in yearly series. Under this last title there is now in course of publication a very valuable series of monographs upon the History of Higher Education in the various States. These monographs are being prepared by competent scholars under the editorial supervision of Dr. H. B. Adams of the Johns Hopkins University. Numerous Annual Reports have been issued, and one is now in press, for the year 1889–90. The working force of the Bureau is divided into three divisions: (1) Records; (2) Statistics; (3) Library and Museum. The library of this Office contains one of the most valuable pedagogical collections in the country.

The Commissioner of Railroads has charge of the government's interests in certain railroads to which the United States has granted loans of credit or subsidies in lands or bonds. By the acts of July 1, 1862, and July 1, 1864, Congress, in order to encourage the building of a trans-continental railroad, granted to several Pacific railroad companies subsidies in land adjacent to the roads, and issued certain amounts of bonds on which was guaranteed interest at the rate of six per cent. The amount of lands given and bonds issued were in proportion to the number of miles of road constructed. The lands were a gift. The bonds were to be repaid by the companies with all interest which might have been advanced by the government. From 1850 to 1872 the various railroads received a total of 155,504,994 acres of lands, and $147,110,069 proceeds of bonds and interest paid by the United States. The roads have repaid of this amount $36,723,477, leaving at the present time due from the roads to the United States the

sum of $110,386,592. This they will be unable to pay upon the maturity of the bonds, and a bill has been before Congress for several sessions looking towards a better adjustment of this debt. The Commissioner of Railroads was originally styled the "Auditor of Railroad Accounts." The office was created June 19, 1878.

Geological Survey.—This branch of the Interior Department was established in 1879. Its work is the investigation and determination of the geological structure of the various sections of the country, the composition of soils, the reclamation of waste lands, etc. In this bureau are made topographical surveys and irrigation surveys of arid regions of the United States. The publications connected with this work, number ten Annual Reports, thirteen Monographs, fifty-eight Bulletins and five Statistical Papers. In these there is a discussion of the geological structure of every state and territory, and information concerning the occurrence and production of each great metallic and mineral staple of the country. The bureau comprises one geographical, twelve geological, six paleontological and four accessory divisions. A division of mines and mining publishes an annual report on the mineral resources and production of the United States.

The Superintendent of the Census.—The Superintendent of the Census is appointed each decade for the purpose of taking the regular decennial census. The Eleventh Census has just been taken. The first was taken in 1790. Each census has shown a tendency to be more elaborate and to embrace a greater number of subjects than any preceding. There were employed in the taking of the Eleventh Census 42,000 enumerators, 2,000 clerks, from 800 to 900 special agents, 175 supervisors and 25 experts.

In addition to these eight bureaus, the department has charge of various other branches of government. All of the territories come under the Secretary's supervision, and look to him in case of any difficulty. The Secretary also has charge

of the Yellowstone National Park, the Hot Springs Reservation in Arkansas, and of certain hospitals and eleemosynary institutions in the District of Columbia. A Superintendent of Public Documents looks after the receipt, distribution, and sale of government publications.

The most important subjects of recent legislation concerning this department have been the dependent pension act, the act providing for the survey of Western lands suitable for irrigation, and the land forfeiture act. By this act over 8,000,000 acres of lands were forfeited by the railroads for failure to fulfil the conditions under which the land was originally granted to them.

The Post Office Department.—The Post Office Department was established in 1789, but the Postmaster-General did not become a cabinet officer until 1829. The Postmaster-General has charge and management of the department, and of the domestic and foreign mail service. He can establish post offices and appoint postmasters of the fourth and fifth classes, *i. e.* those whose salaries are less than $1,000. These number over 50,000. The total number of postoffices is about 56,000. The President appoints to those of the first three classes. Other officers besides the Assistant Postmasters-General are, the Superintendents of the Money Order Division, of Foreign Mails, and of the Railway Service, and an Assistant Attorney-General for the department.

The United States is a member of the Universal Postal Union, of which most, if not all, of the civilized countries are members. The central office is known as the International Bureau of the Universal Postal Union, and is conducted under the superintendence of the Swiss Postal Administration, and its expenses are borne by all the nations composing the Union. The revenues of the Post Office Department nearly equal the expenditures, and would have exceeded them before this but for the fact that as soon as the amount of receipts has warranted, improvements have been made in the service,

through the reduction of postage rates and the extension of the free delivery system. It has never been the policy of the government to make this department a source of revenue.

The patronage of the postoffice department is the most important of any of the departments, and it is very largely for this reason that the Postmaster-General is a member of the Cabinet. Crawford of South Carolina secured in 1820 the passage of an act limiting the term of office of postmasters to four years. The appointment of postmasters does not come under the Civil Service Act. It is the principal aim of civil service reformers, that postmasters should be appointed under its provisions. The most important questions of public policy concerning this department, are the reduction of postage rates on letters to one cent; the advisability of the establishment of a postal telegraph service; the extension of the free delivery system, and the relation of the department to the civil service regulations.

The Department of Justice.—The office of the Attorney-General of the United States was established in 1789; the Department of Justice not until 1870. The Attorney-General gives advice upon legal points to the President and also, when requested to do so, to the heads of departments. He directs the cases of the United States and sometimes appears in them, especially in the Supreme Court. He supervises the United States Marshals and District Attorneys. His substitute and principal assistant is the Solicitor-General. There are two Assistant-Attorneys-General, the business of the one being connected with the Supreme Court, and of the other with the Court of Claims. There are also, as mentioned before, certain legal officers attached to the other departments. Additional counsel is frequently employed to assist in the argument of important cases. To the Attorney–General belongs the duty of recommending persons to the office of judges, etc., in the United States Circuit and District Courts.

The Department of Agriculture.—The Department of Agriculture was organized as a separate department in the

year 1862. In 1889 its head became a cabinet officer. There is one Assistant Secretary. The duties of the Secretary are to promote in every way the agricultural interests of the country. For this purpose the department is separated into thirteen bureaus, under the following officers (1) the Entomologist, (2) Chief of the Bureau of Animal Industry, (3) Chemist, (4) Botanist, (5) Chief of the Section of Vegetable Pathology, (6) Statistician, (7) Ornithologist, (8) Director of the Office of Experiment Stations, (9) Microscopist, (10) Pomologist, (11) Chief of the Forestry Division, (12) Chief of the Seed Division, and (13) Weather Bureau. The enumeration of these titles indicates the general nature of the work of the department. Here are investigated the habits of injurious insects and birds and the best means for their destruction; the causes of and remedies for vegetable and fruit diseases. The Chief of the Bureau of Animal Industry inspects herds of cattle and causes to be slaughtered those suffering from a contagious disease. Under a law passed in 1890, he also inspects all cattle and meat intended for export to foreign countries. He investigates causes of and remedies for cattle diseases, the best method of breeding, etc. The Statistician publishes monthly and annual reports concerning statistics of the condition, prospects and harvests of the principal crops, the wages of farm labor, etc. The Chemist analyzes fertilizers, soils, etc. By the act of March 2, 1887, $15,000 per annum was appropriated by Congress to each of the States and Territories which have established an agricultural college or an agricultural college department, for the establishment of experiment stations. The Department of Agriculture has general oversight over these stations.

The Department carries on experiments regarding the feasibility of profitable silk reeling in this country, for which purpose there is a separate division; it also makes experiments in the manufacture of sugar from sorghum and from beets grown in this country. The best qualities of seeds are tested and distributed gratuitously among the farmers. Efforts are

made to introduce and foster the cultivation of new kinds of agricultural products, and in various ways to advance agricultural interests.

Congress, by an act passed during its last session, 1890, created a weather bureau under the Agricultural Department and transferred to it the business of weather prognostication which had been under the Chief Signal officer in the War Department. The service remains unchanged. It has stations at the military stations in the interior of the continent, at life-saving stations, and at other points in the States and Territories. Meteorological observations are taken at each station, and the information forwarded to the central office at Washington, where weather predictions for the succeeding day or days are made. The predictions are given gratuitously to the public through a system of flag signals, by the distribution of weather maps, and by publication in the daily papers. The percentage of successful forecasts of the weather during 1890 was 84.4.

The Department publishes the result of the scientific investigations carried on by its officers in "Annual Reports" of the Secretary and Chiefs of Divisions; in a series of "Circulars" on special subjects, in regular "Bulletins;" and in a series of studies on "Insect Life." These documents are distributed gratuitously.

The Department of Labor.—The Department of Labor was created in 1884, as a bureau under the Interior Department. In 1888, it became a separate department. It is a purely statistical bureau. It collects and publishes statistics on the cost of production, on wages, labor statistics, etc. Its six published reports are on (1) Industrial Depressions, (2) Convict Labor, (3) Strikes and Lockouts, (4) Working Women in Large Cities, (5) Marriage and Divorce, and (6) Railroad Employés.

Had all the executive departments been created at one time by a constitutional convention, we should be justified in expecting a greater symmetry and uniformity in the naming and

grouping of chief officials. An inspection of the various executive officers shows that not a few are under departments other than would be expected; and the naming of officials is often misleading as to their importance. Within recent years there has appeared a strong tendency to depart yet more from a systematic grouping of executive duties under departments. Executive functions have been given to bodies entirely independent of the departments. To complete our survey of the federal executive we must consider the following: (1) the Interstate Commerce Commission, (2) the Fish Commission, (3) the Civil Service Commission, (4) the Government Printing Office, (5) the National Museum, Smithsonian Institution, the Bureau of Ethnology, (6) the Congressional Library.

The Interstate Commerce Commission.—With the growth of our railroad system have come various abuses. Roads have discriminated in favor of one shipper over others, and of one locality over others. Combinations have been formed to keep up railroad passenger and freight charges. Their influence has been used in political offices through the issuing of free passenger tickets, etc. Various other minor abuses have centered around these corporations. The States have been powerless to provide a remedy for the roads have been mostly engaged in interstate commerce with which the States are forbidden by the constitution to interfere. To provide a remedy for the principal of these abuses Congress passed the act of February 4, 1887, regulating the practice of railroads and creating the Interstate Commerce Commission to enforce the provisions. The Commission is composed of five commissioners appointed by the President. The Commission sits as a court and adjudicates complaints arising between railroads or between citizens and railroads, involving principles covered by the act. It has rapidly attained its present position as one of the most important courts in the United States. A statistician, attached to the Commission, publishes annual statistics of railroads, covering the extent, the amount, and value of their stock and bonds, expenses of

management, receipts, &c. The act, of course, applies only to those railroads lying in more than one State.

The Fish Commission.—The Fish Commission was created by act of Congress in 1870. Its chief is the Commissioner of Fish and Fisheries. There is also an Assistant Commissioner. This Commission stands in the same relation to the fishery interests of the country as does the Department of Agriculture to agricultural interests. Both are scientific and practical departments. The former investigates the food, habits and enemies of fishes; experiments concerning the best methods of their capture, the best kind of baits, apparatus, etc. It collects statistics of fish and fisheries of the whole country. Probably its most important service is the propagation and distribution of food fishes. Under its direction are hatched and liberated millions of the young of the best food fishes in the various inland waters of the United States. Rivers suitable for black bass, shad, carp, or other food fishes, but not having them in their waters, are supplied. For these purposes the Commission owns and manages various fish hatcheries, fish distributing vessels and cars, propagating ponds, etc.

The yearly appropriation for carrying on this work amounts to nearly a quarter of a million of dollars.

The Civil Service Commission.—To correct the wasteful and demoralizing spoils system, in vogue ever since the first administration of Jackson, Congress passed, January 16, 1883, "an act to regulate and improve the Civil Service of the United States." Under the provisions of this act, the President appoints three commissioners, only two of whom may be of the same political party, to administer the act. It is one of the duties of this Commission to provide examinations for testing the fitness of applicants for public service. Appointments in those branches of the government coming under this act can only be made from persons who have passed the civil service examination successfully. Adherance to one or the other political parties has little weight in the selection

of employés. Under the regulation of this act are: the nine executive departments at Washington, the Civil Service Commission itself, the customs districts, eleven in number, in each of which there are fifty or more employés, all postoffices in which there are fifty or more employés, and the Railway Mail Service; including altogether about 28,500 clerks.

The Government Printing Office.—In order that there may be intelligent legislation and administration, an extensive system of reports is required. The publications of the federal government are of course very numerous. Each department, bureau, and division makes an annual report. The proceedings of Congress are reported verbatim and published. This printing and binding are done by the government through the government printing office, established for that purpose. The Bureau of Printing and Engraving, which is under the Treasury Department, does no part of this. Its duties are limited to those of engraving and printing bank-notes, etc. The chief of the Government Printing Office is styled the Government Printer, and is appointed by the President.

The National Museum, Smithsonian Institution and Bureau of Ethnology.—In 1829 James Smithson, bequeathed by his will the whole of his property, something over half a million dollars, "to the United States of America to found at Washington, under the name of the Smithsonian Institution, an establishment for the increase and diffusion of knowledge among men." This fund held by the United States now amounts to $702,000 yielding six per cent. per annum. In 1846 Congress determined to devote this gift of Smithson to the founding and support of a museum. The National Museum was established in 1846, and is supported by annual appropriations by Congress.

In 1879 Congress created a special bureau under the Secretary of the Smithsonian Institution, to be called the Bureau of Ethnology, to make researches in North American anthropology. This work is supported by annual appropriations.

The National Museum, Smithsonian Institution and Bureau of Ethnology, though distinct institutions[1] are under substantially the same management. Their reports are of great scientific value.

The Librarian of Congress.—The Librarian of Congress is an independent officer and reports directly to Congress. He has complete control of the Congressional Library, now situated in the Capitol building. The books now collected in this library have been purchased from time to time by Congress. There is a law requiring that two copies of every book, pamphlet, newspaper, photograph, etc., copyrighted in the United States, shall be sent to the Congressional Library. It thus receives large and valuable additions yearly. The Library now numbers over half a million volumes. A new building for the library is in process of construction, and it will have cost when completed between seven and eight million dollars.

[1] A valuable and suggestive paper on The Origin of the National Scientific and Educational Institutions of the United States, by Dr. G. Brown Goode, Assistant Secretary of the Smithsonian Institution, was published by the American Historical Association. Vol. IV, Part 2. G. P. Putnam's Sons, New York, 1890.

CHAPTER XI.

The Federal Judiciary.

In forming the Constitution the framers of our government were controlled by the principle that the powers which belong to all governments can be most safely and satisfactorily exercised by dividing them according to their nature among three separate branches, the executive, the legislative, and the judicial. Under the Articles of Confederation this maxim of government had been disregarded. The old Continental Congress had been given under that plan, not only legislative powers, but also those executive and judicial powers which the States had yielded to the central government.

The lack of a Federal judiciary was, as Justice Story says, "one of the vital defects of the old confederation." Hamilton, the expounder of the Constitution, said: "Laws are a dead letter without courts to enforce and apply them."

The reasons why a national system of courts was necessary were in order that there might be some power:—

1. To give to laws an interpretation that would be uniform throughout the land. If there were thirteen independent courts, each giving Federal decisions on the same causes arising under the same national laws, what but confusion and contradiction could arise?

2. To settle disputes between the States and citizens of different States.

3. To construe and interpret the Constitution itself, and decide all disputes arising under it.

4. The Constitution is the supreme law of the land. No legislative act of either Congress or of a State legislature contrary to the Constitution can therefore be valid. Hence, the necessity of some power which should have authority to determine the constitutionality of an act when brought into question, and—

5. There should be the power of determining the constitutionality of any act of a State legislature, and thus enforce upon State legislatures the restrictions laid upon them, such as, for example, the inability to lay impost duties, to pass laws violating the obligation of contracts, etc., or to regulate objects given exclusively to Congress. The manifest necessity of such a power may be best stated by using Hamilton's own words (Federalist, 30):

"What would avail restrictions on the authority of the State legislatures without some constitutional mode of enforcing the observance of them? The States, by the plan of the Constitution, are prohibited from doing a variety of things, some of which are incompatible with the interests of the Union; others with the principles of good government. The imposition of duties on imported articles, and the emission of paper money are specimens of this kind. No man of sense will believe that such prohibition would be scrupulously regarded, without some effectual power in the government to restrain or correct infractions of them. This power must be either a direct negative on the State laws, or an authority in the Federal courts to annul such as might be in manifest contravention of the articles of Union." * * * "These courts are to be the bulwarks of a limited constitution against legislative encroachments."

These reasons were so strong that there was little or no objection in the constitutional convention to the creation of a national judiciary, but difficulty arose in determining its precise nature and powers. As we have learned, the difficulty to be overcome in drafting our new scheme of government was to satisfy State jealousies and interests, and preserve State

rights of government, and yet to obtain a strong central government; and to harmonize State rights with Federal strength.

In forming the national judiciary, the objects to be obtained, difficult of achievement, were, to use the words of Judge Curtis (Federal Courts of United States): "To construct a judicial power within the Federal Government, and to clothe it with attributes which would enable it to secure the supremacy of the general constitution and all of its provisions; to give to it exact authority that would maintain the dividing line between the powers of the Nation and the States, and to give to it no more: and to add to these a faculty of dispensing justice to foreigners, to citizens of different States and among the sovereign States themselves, with a more even hand and with a more assured certainty of the great ends of justice than any State power could furnish—these were objects not readily or easily to be obtained, and yet they were obtained with wonderful success."

The establishment of the federal judiciary is given in a few words in the Constitution: "The judicial powers of the United States shall be vested in one Supreme Court and in such inferior courts as Congress may from time to time ordain and establish."

In pursuance of this clause, Congress passed in 1789, what is known as the "Judiciary Act," the first section of which reads: "The Supreme Court of the United States shall consist of one chief justice and five associate justices." This act also established the inferior federal courts, the circuit and district courts, and also defined and fixed their fields of jurisdiction, *i. e.*, the class of cases which these courts could have power to try.

The Supreme Court stands at the head of our national judiciary. Its field of jurisdiction is the construction and exposition of the Constitution of the United States. Hon. S. F. Miller, senior justice of this court, speaking of the high character of the duties performed by this court, said: "This court, whether we take the character of the suitors that are

brought before it, or the importance of the subjects of litigation over which it has final jurisdiction, may be considered the highest the world has ever seen. It has power to bring States before it, States which some of our politicians have been in the habit of considering sovereign, not only when they come voluntarily, but by Federal process they are subjected, in certain cases, to the judgment of the court. Whatever these States may have been at the time of the formation of the Constitution, they now number their inhabitants by the millions, and in wealth and civilization are equal to many of the independent sovereignties of Europe."

There have been considerable changes in the structure and duties of the Supreme Court since its formation. At present there are nine justices, instead of six. There is now one annual term of the court held, beginning on the 2d Monday of October and continuing until about May 1. Of the nine justices six constitute a quorum.

The Supreme Court first met in February, 1790. Since its organization it has had eight chief justices, in the following order.

John Jay, 1789–1795.
Oliver Ellsworth, 1795–1801.
John Marshall, 1801–1835.
R. B. Taney, 1836–1864.
S. P. Chase, 1864–1873.
M. R. Waite, 1873–1888.
M. Fuller, 1888.

In 1795 John Rutledge was appointed to succeed Jay, received his commission, and held one term of the court, but was not confirmed by the Senate.

During the early years of the existence of the Supreme Court few cases arose requiring its jurisdiction. During the first term there was no business to be transacted. In 1801 there were only ten cases on the docket, and for some years the average annual number of cases was twenty-four; but in later years the number rapidly increased. From 1850 the

average number of cases decided was seventy-one, while from 1875 to 1880 the average was three hundred and ninety-one per annum, and now there are more than a thousand cases awaiting a hearing, and the court is so far behindhand in its work that it takes from three to four years for a case to come up for trial after having been entered upon the docket. At present there are about four hundred cases granted a hearing yearly.

Almost immediately after the adoption of the Constitution began struggles and disputes between the States and the Federal Government. In this contest the Supreme Court steadily upheld the central power, and did much by its decisions to enforce and establish the power of the Constitution. Especially was the court powerful during the years 1801 to 1835, when Marshall was chief justice, to whose wisdom and prudence it is difficult to ascribe too much influence in fixing the present stability of our government.

The Supreme Court has been an invariable supporter of the Federal Constitution. During the early years of our government it was our firmest barrier against the efforts of the States to lessen the federal power. It has always maintained the balance of power between the States and the Union.

The annual term of the Supreme Court begins the second Monday of October and lasts until about May. Daily sessions, with the exceptions of Saturdays and Sundays, are held, beginning at 12 o'clock, in the Capitol building at Washington. The present justices are Fuller, chief justice, and Lamar, Bradley, Field, Harlan, Gray, Blatchford and Brewer, associate justices. Every Saturday morning the justices meet in consultation and decide cases argued during the week. The decisions are announced on Monday mornings. The justices are appointed by the President, hold office for life, and are removable only by impeachment.

The following are a few cases decided by the Supreme Court with which it is important that we should be acquainted

owing to the influence which their decision has had upon our history:

1. In 1793 the case of *Chisolm* vs. *Georgia* came before this court. Chisolm, a citizen of North Carolina, sued the State of Georgia for a sum of money, and under the second section of Article III of the Constitution, which says that the judicial power of the United States shall extend to disputes between a State and citizens of another State, the court gave judgment in his favor. This decision that a State government could be sued against its will created so much dissatisfaction that the Eleventh Amendment was adopted, which says, "the judicial power of the United States shall not be construed to extend to any suit in law or equity commenced or prosecuted against one of the United States by citizens of another State, or by citizens or subjects of any foreign State." The effect of this amendment has been to enable a State to repudiate its just debts.

2. In 1819 was decided the very important case of *McCulloch* vs. *Maryland*. The United States had established a national bank, which was objectionable to many of the States. Maryland attempted to destroy the bank by levying a very high tax upon a branch bank within the State. The question as to her right to do this was brought before the Supreme Court. To have allowed Maryland this right would have been to give to a State Government the power to oppose and render useless an institution created by the Federal Government. The court sustained the Federal power, and it was declared unconstitutional for any State to pass laws opposing the operation of any Federal statute.

3. In the case of *Dartmouth College* vs. *New Hampshire* was declared the unconstitutionality of a state law which impaired the obligation of contracts.

4. A very important case decided by Chief Justice Taney was that of *Dred Scott* vs. *Sandford* in 1857. Dred Scott, a negro slave in Missouri, had been carried into the Territory

of Minnesota, where, by the Missouri Compromise of 1820, slavery did not exist. Upon being carried back into Missouri by his master, Scott claimed his freedom upon the ground that he had been voluntarily carried into a Territory where slavery was not allowed. The Supreme Court in its decision declared that Congress had never had the power to pass any law which would forbid slave-owners settling in Territories and still retaining control of their slaves. The whole country was at this time in great excitement in regard to the question whether or not, in the organization of the Territories of Kansas and Nebraska into States, slavery should be prohibited, and this decision, whereby the Missouri Compromise Act was practically annulled, and which pointed directly forward to an establishment of slavery in the new Territories, raised public excitement to a fever heat. It was in this decision that the statement was made that at the time of the formation of the Constitution the general opinion had been that the colored man had no rights which the white man was bound to respect. As a direct result of this case a more determined stand was taken at the North against slavery; the Anti-Slavery Republican party was strengthened, and their candidate for President, Abraham Lincoln, elected in 1861, and the catastrophe of civil war precipitated.

5. The Legal-Tender decisions, given in several cases soon after the civil war, are important. During the progress of the war the Government, in order to raise funds to meet its extraordinary expenses, had been forced to issue slips of paper which represented no deposits of coin in the Treasury, but only promises to pay certain sums by the Government. These were declared legal tender, that is, made by law as good as gold and silver, and the people were forced to receive them in payment of debts and for commodities. It was questioned whether the Government had by the Constitution power to do this. The legal-tender decisions declared that it had.

Federal Judicial System and Jurisdiction of the United States Courts.

District Courts.— The United States is divided into judicial districts. Many single States form a judicial district, while others are divided into two and others into three districts. The number of districts has varied. At present there are about sixty. To each of these districts is given a court and a district judge. These form the lowest grade of Federal courts.

Circuit Courts.—These judicial districts are grouped into nine circuits. For example, the Fourth circuit includes the districts of Maryland, Virginia, West Virginia, North Carolina, and South Carolina. For each circuit is appointed one circuit judge. One of the justices of the Supreme Court is also allotted to each of the circuits, who, after the expiration of the Supreme Court term, visits his circuit, and tries the more important cases which may arise in that circuit. The Circuit Court may be held by the circuit judge, the Supreme Court justice, or the district judge of that district in which the court is sitting, or by any two of them, or all of them, sitting together. The Circuit Courts form the next series of the Federal courts higher than the District Courts.

Jurisdiction.—The relation between the Supreme, Circuit and District courts is easy to explain. Their jurisdiction is upon federal questions; that is, over those cases mentioned in the Constitution over which judicial power has been granted to the United States, viz., questions arising under the Constitution, federal laws, or treaties, between citizens of different States, between citizens and foreigners, between States themselves, etc., and all crimes punishable under the United States laws.

The Circuit Court is higher than the District Court, and to it cases involving $500 and over may be appealed from the District courts. The Supreme Court is the court of last resort, and to it all appeals from the Circuit Courts come,

with the limitation that $5,000 be involved. The cases decided by the Supreme Court are then of two classes: (1) those over which it has original jurisdiction, (see Constitution); *i. e.*, those cases which originate or begin in that court; and (2) those cases over which it has appellate jurisdiction, *i. e.*, those cases which come thither by appeal from the lower Circuit Courts, and which form the larger part of its work, and also by appeal from the highest State courts in cases involving certain Federal questions. The District of Columbia being directly governed by the United States, its courts are Federal courts, and hence, cases may be appealed from such courts to the Supreme Court; likewise for the same reason appeals may be had to the Supreme Court from the territorial courts.

We must remember that these courts deal only with Federal questions arising under United States laws, and, that besides these courts, all of the States have their own judicial systems of courts to interpret state laws and to try the great majority of cases. These courts are entirely separate from the United States courts, and with different judges, though cases may begin in them and be transferred to the United States Courts, if the interpretation of a Federal law is brought into question.

There are four grades of law in the United States. First and highest is the United States Constitution; second, United States laws, or statutes as they are called, passed by Congress; third, State constitutions; and fourth, State laws, passed by the State legislatures. In case of conflict of laws the lower must yield to the higher.

For the purpose of settling claims of private persons against the United States, there has been established at Washngton a Court of Claims, held by five judges. From it appeals lie, in some cases, to the Supreme Court, and, in others, they are referred to Congress for action.

CHAPTER XII.

The Ordinance for the Government of the Northwest Territory.

When the colonies joined in union under the Articles of Confederation, in 1781, they ceded to the General government their claims to unoccupied western territory. The largest land grant was that by the State of Virginia, which occupied that part of the United States lying north of the Ohio River and east of the Mississippi River.

The problem of management of public lands was thus early presented to our Federal Government for solution. The manner in which Congress dealt with this question has proven eminently wise and successful, and has been largely influential in making the United States the nation that it is to-day. The feature that has characterized the plan followed from the beginning, and which still obtains, is the formation of States from such territory as soon as there is sufficient population. Such States have similar forms and powers of government as the original States, are on an equal footing with them, and are bound by the Constitution of the United States. Congress has absolute control of the Territories. (For Territorial government see Article on Territories.)

The ordinance which the Continental Congress adopted in 1787 for the government of the Northwest Territory is of great importance: it provides for the establishment of our territorial system; it contains many of those features of management which have been used from that date until now; and

it is also of interest because of the influence it has had upon the history of slavery in our country.

This ordinance provided that the whole of this territory should form one district. At first Congress appointed the governor, secretary, judges, and military generals. The governor was to make the laws, subject to the approval of Congress. When the population reached five thousand the inhabitants were to have a legislature of their own, and to have a delegate who should sit in Congress, but have no vote. There was a bill of rights. Public education was encouraged. Not less than three nor more than five States were to be formed from it. Ohio, Indiana, Illinois, Michigan, and Wisconsin have been the five States formed from this territory. The transformation of the territory into States was promised as soon as the population should reach sixty thousand.

Slavery was forever prohibited in all this territory. We shall see the tremendous importance of this clause, which guaranteed to this large tract freedom from the curse of slavery, when we come to consider the struggles which were made for many years to keep slavery from the territories.

CHAPTER XIII.

Government of the Territories.

There are at present four areas, situated outside of the States, and organized under territorial governments. These are Utah, Arizona, New Mexico and Oklahoma. Besides these there are the two unorganized territories, Indian Territory, and Alaska, and the District of Columbia, which last tract contains sixty-four square miles.

Government of Territories.—The fundamental law of a Territory is the Federal Constitution, just as in a State. Unlike the State, however, it has no constitution of its own, but is regulated entirely by Congress. In Section 3, Article IV, of the Constitution, it is declared that "Congress shall have power to dispose of and make all needful regulations respecting the territory or other property belonging to the United States." In pursuance of this clause Congress has in the four organized Territories instituted governments as follows: The executive of the Territory is a Governor appointed by the President for a four years' term. There is also a secretary and treasurer. The legislature consists of two houses, a council of 12, and a House of Representatives of 24. These are elected by the people of the Territories, and have a term of two years. The Legislature meets every other year. All its acts require approval by Congress before becoming law.

The judiciary consists of three or more judges appointed by the President, together with a district attorney and United States marshal.

Territories send neither Senators nor Representatives to Congress, but have one delegate apiece in the United States House of Representatives, who may speak, but not vote.

Admission of a Territory as a State.—A Territory is an embryo State. As soon as a Territory becomes sufficiently populated it applies for admission into the Union as a State, and such admission is accomplished in the following manner. When an application by a Territory for Statehood is made, it is considered by Congress, and, if approved, the inhabitants of the Territory are authorized to form for themselves out of such Territory a State government, and thus prepare themselves for admission into the Union.

A State government is formed as follows: The Governor of the Territory issues a proclamation declaring that on a certain date there shall be an election of delegates to a convention; such convention is to be held on a certain date. These delegates are elected by a popular vote. The members of the convention thus formed declare that they, on behalf of the people of the Territory, adopt the Constitution of the United States, and then proceed to draft a State constitution and government. It is provided that this constitution shall be Republican in form, and make no distinction in civil and political rights on account of race or color, except for Indians not taxed: that it shall not be repugnant to the Constitution of the United States and the principles of the Declaration of Independence. Perfect religious toleration must be guaranteed, all right or title to the unappropriated public lands lying within the Territory must be disclaimed and given over to the United States. Provision must be made by the constitution for the establishment and maintenance of the system of public schools.

After adoption by the convention the constitution is offered to the people for ratification. If it is ratified, the Governor certifies the fact to the President of the United States. Provided the constitution is found to comply with all the conditions just mentioned, the President issues his proclamation declaring the

ratification of the constitution, and upon the same day that the proclamation is issued the territory is deemed admitted by Congress into the Union as a State, on an equal footing with the original States, and entitled to representation in both houses of the Federal Congress. The representatives and the Governor and other State officers are elected on the same day as that upon which the constitution is ratified by the people.

CHAPTER XIV.

State Governments.

The United States is a nation of forty-four federated States. Each State has its own separate government, which is sovereign, except as to a few powers which have been granted to the United States government for general purposes. Citizens of States are also citizens of the United States, and thus owe a double allegiance, namely, to the State in which they reside and to the United States.

These States vary in size from that of Texas, the largest, with an area of 265,780 square miles, to that of Rhode Island, the smallest, with 1,250; and in population from that of New York, with nearly six millions, to that of Nevada, with about forty-five thousand. The largest State is greater than either France or the German Empire.

State governments are older than the Federal government, for it was by a grant by the States of certain of their powers that the United States government was created. Each State is represented in Congress by two members in the Senate. Members of the lower branch of the Federal legislature are apportioned among the States according to population. As in the case of the United States, the powers of government are divided among three departments—the executive, legislative, and judicial.

In the United States Constitution it is expressly declared that "the powers not granted to the United States by the Constitution, nor prohibited by it to the States, are reserved to the States respectively, or to the people." It would require

considerable space to enumerate the duties of State governments. With the exception of the few acts which the constitution forbids them to perform, most of which they would not care to perform if allowed, and the few general powers coming within the province of the Federal Government, the States can do whatever their legislatures sanction. They can go to the extremes of State socialism. All States have a complete judicial system. They regulate all legal relations of their citizens, the laws of husband and wife, principal and agent, and of contract. They provide for the detection and punishment of crime. They control and mainly support the militia of the county. Railroad, banking, insurance, and other corporations, are chartered and controlled by them. The construction and maintenance of roads, the care of the public health, the inspection of factories, the determination of the right of suffrage, and the control of its own elections are among the exclusive powers of State governments. Our extensive system of public schools are under the dual management of the State and local governments, and under the superintendence of State officers. The State takes care of the defective classes, of the insane, paupers, etc.; and, in general, performs all those ordinary duties concerning internal affairs which are exercised by central governments.

Each State government has—

1. A Constitution.
2. A Legislature of two Houses.
3. An executive, composed of a Governor, Lieutenant-Governor (in almost all cases), Secretary of State, Auditor, and a few other officers.
4. A system of local government in counties, towns, cities, etc.
5. A body of State laws.
6. A judicial system of courts, from which no appeal can be had to United States courts, except upon Federal questions.
7. A system of local taxation.

Each State government has all the rights usually pertaining to a sovereign State, except—

1. Right of secession (settled by the civil war).

2. Those powers which the Federal Constitution expressly forbids to the States.

3. Those powers which have in the Constitution been exclusively given to the United States.

All States have public debts, which they may, and sometimes do, repudiate. They can be sued only by other States. The Eleventh Amendment declared that a citizen could not maintain a suit against a State. State laws are binding only within the boundaries of the State enacting them.

State Constitutions.—As the Federal Constitution is the supreme law of the United States, so the State constitution is the highest law of the States. The Constitutions of the original thirteen States were naturally formed after the model of the charters enjoyed by the New England colonies. In the colonies of Rhode Island, Connecticut, and Massachusetts their charters were adopted as constitutions without any change, except, of course, the annulment of obedience to the English king. All subsequent constitutions have been closely modeled after these first thirteen. The Federal Constitution provides that all State constitutions must be Republican in form. (For other conditions of admission of territories as States, see subject "Territories.") The modes of amendment of constitutions differ in different States, but in all, amendment is much easier of accomplishment than in the case of the Federal Constitution. This is shown by the fact that since 1776 there have been adopted by the States one hundred and five complete constitutions, and two hundred and fourteen partial amendments; while, since the passage of the first ten Federal amendments in 1789, there have been but five additional amendments. Some States provide that the constitution shall be submitted to the people for amendment at the end of certain intervals of time. In the larger number of cases a majority of the popular vote is required for ratification of a constitutional amendment. State constitutions show a tendency to become longer, and to regulate a constantly increasing number of subjects.

A normal State constitution has the following provisions:

1. A definition of the State boundaries.

2. A bill of rights (guaranteeing private rights, such as freedom of the press and speech, trial by jury in criminal cases, right to assemble and petition, etc.).

3. A frame of government, an enumeration of officers and powers of legislature, executive, courts of justice, etc.

4. Miscellaneous provisions, relating to administration of schools, militia, taxation, debts, local government, corporations, amendments, etc.

State Legislatures.—The legislature in all States consists of two Houses, of which the upper and smaller branch is called the Senate, and the lower and more numerous branch usually the House of Representatives, though in six States it is termed the Assembly, and in three the House of Delegates. The members of both houses are elected by popular vote, but Senators usually for a longer time, and frequently higher qualifications for them are required. States are divided into districts for election purposes, and, though members of the legislature may offer themselves for election from any district, it has become the invariable custom for them to be elected only from the districts in which they reside. Universal manhood suffrage, that is, the right of all male citizens over 21 years of age to vote, is the rule, though in eight States paupers have no vote, and in a few, a certain amount of education is required (generally enough to read the State constitution). The number of members in the State legislatures varies greatly. In the Senate, Delaware has the smallest number (9), and Illinois the largest (51). In the lower House, Delaware has likewise the smallest number (21), while New Hampshire has the greatest (321).

The Lieutenant-Governor of the State is *ex officio* President of the Senate. In all States, except six, sessions of the legislature are held only once every other year, and even then the length of the session is limited to a fixed number of days. As in Congress, business is conducted by means of committees, but are in both Houses elected by ballot. The State legisla-

tures have full charge and control of all local governments within their individual States. The Senate has the power of trying impeachments of State officials. It also ratifies appointments of the Governor. In all States, except four, acts of the legislature require the signature of the Governor before they become laws. To pass a bill over a veto requires in twenty-three States a two-thirds vote in both Houses; in two, a three-fifths vote, and in nine, a majority vote of the total number of members. A State legislature can enact no law which will be effective beyond its own boundaries.

State Executive.—The chief executive of the State is the Governor. Other chief officials are the Lieutenant-Governor, Treasurer, Attorney General, Secretary of State, Auditor, and Superintendent of Public Instruction. The term of office of the Governor varies in different States from one to four years. He has but small powers of appointment, most of the State officials being elected by the people. In all but four States he has a veto on legislation. He has the power of pardoning. The Lieutenant-Governor is President of the Senate.

State Judiciary.—The State judiciary includes three sets of courts:

1. A Supreme Court of Appeals, the highest court, from which cases involving Federal questions may be appealed to the Supreme Court of the United States.

2. Superior courts of record.

3. Various local courts, such as county courts, corporation courts, etc.

Each State recognizes the judgments of other States, and gives credit to their public acts and records, and delivers up to justice, on demand of the executive, any criminal fleeing from other States into her borders. In most of the States the judges are elected by the people, though in eight they are appointed by the Governor, and in five by the legislature. The Attorney-General conducts cases in which the State is a party, and manages other legal business in which the State is interested.

CHAPTER XV.

Local Government.

In the chapter on Government we learned that the people of the United States owe allegiance to two systems of government; the one a central national government, the other the state governments. We have now to mention a third system of governments, namely, local governments; for citizens of the United States live, in reality, under three distinct governments: first and highest, the National United States Government; second, State governments, and third, local governments. It is concerning local governments in the United States that we shall learn in this chapter.

Just as the whole United States is divided into forty-eight sections, each section being a State or Territory, so each State is in turn, for convenience in the administration of its government, divided into small local areas, each division managing those affairs which appertain to its own area. Many of these divisions, were not formed by dividing up the States. The divisions came first, or sprang up naturally within the States as soon as the colonies were settled. Social governments were the first governments formed in the settlement of our Western territory. Dr. Edward Bemis has described the beginnings of government in a new State in the following interesting manner:

"The genesis of local government in Western hamlets is very simple. First comes the settler who, ax in hand, clears the ground for his humble dwelling, and plants whatever seed he has brought with him. Then comes another settler and

another until perhaps a dozen families are established near. Two wants are now felt: roads, or at least paths from house to house, from hamlet to market town, and a school-house for the multiplying children. There is no strong central authority to provide these things, but the settlers meet and vote to tax themselves. The services of a supervisor, collector, clerk, constable and justice of the peace are required."[1] This is the beginning of the township and county. As population increases, other wants arise which only a stronger government can supply. A territorial, and then a State government are consequently formed.

The principal duties of local governments are those of education, police, sanitation, charity, the construction and maintenance of public roads, the administration of justice, the assessment and collection of taxes, etc.

There are three types of local government in the United States: First, the New England type, in which the unit of government is the town or township; second, the Southern type, in which the unit is the county; and third, the Western system, in which the New England and Southern systems are combined.

1st. Local Government in New England.—Here the unit of government is the township, or town, as it is usually called. There are few towns exceeding five square miles in area, and the population is generally less than 3,000. The New England township is therefore not a thickly settled area. When a town becomes closely settled it is incorporated as a city.

In the New England towns the people govern themselves directly. In the State and Federal governments the people are governed not by themselves, but through representatives chosen by themselves. The town or township form of govern-

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[1] Local Government in Michigan and the Northwest. *J. H. U. Studies in History and Political Science.* Vol. I, No. 5, p. 11.

ment is that of a pure democracy; the States and Federal governments are representative governments or republics.

The supreme governing power of a town is in the town meeting, composed of all qualified voters of the town. The town meeting is held in the Spring of each year. After the choice of a Moderator, officers are elected for the ensuing year, reports of officers for the past year read, and the amount of taxes to be raised and expenditures to be made during the year, determined upon. The officers are the Selectmen, three, five, seven or nine in number, who constitute the executive officers of the town, and administer the ordinances passed by the town meeting; a town clerk, who keeps a record of the proceedings of the town meeting, and a record of births, deaths, marriages, etc.; a treasurer, assessors and collectors of taxes, constables, and various other petty officers. Several offices are frequently given to the same individual.

The county also exists in New England, and is formed by the union of several towns, but it is of very little importance, and has but few duties. The township system is found in the Middle States, but in a modified form. It is less democratic as a rule—officers being elected by ballot, the town meeting generally absent, and county government more important.

2d. Local Government in the South.—Here the town (township) does not exist, except in a few instances. The unit of government for performing local duties is the county, which is much larger than the New England townships. The county government is managed by a Board of County Commissioners. These are elected not in open meeting as are the town officers, but by ballot. County government is therefore a representative or republican government. The county, wherever found, is primarily a judicial district. The chief officer for executing the decrees of the county judiciary is the sheriff. Other county officers are the treasurer, assessor, etc.

Local Government in the West.—Here, as before stated, we find the New England and the Southern systems com-

bined, but combined in different States in such various degrees as to make impracticable any attempt to describe them more particularly.[1] In consequence of the grants of land by the Federal Government to Western States for education, local areas for the administration of these funds have been formed. These are called school districts. Local government has tended to center around these districts, and they have in many cases become important administrative districts. Their boundaries coincide with the boundaries of the townships and counties, though a number of school districts may be in one county or township.

[1] More detailed accounts of the various systems of Local Government in the United States may be found in the early numbers of the *Johns Hopkins University Studies*, and also in Professor George E. Howard's *Local Constitutional History*, an extra volume in the same series.

CHAPTER XVI.

City Government.

The proportion of people in the United States who reside in cities is increasing. In 1790 there were only thirteen cities of 5,000 inhabitants and none with 40,000. Now there are over 500 that have a population exceeding 5,000 and 28 with a population of 100,000. In 1790 33 per cent. of the total population lived in cities of over 8,000 inhabitants, while to-day over 25 per cent live in cities of this size or over.

When any small area becomes thickly and permanently settled, and a certain population is reached (which varies in different States), the state legislature is appealed to, and a charter of incorporation as a city is granted. This enables the incorporated district to act independently of the county or township, to levy municipal taxes and carry out public improvements. Rapid as has been the growth of cities, the duties required of city governments have increased still faster.

The government of our large cities has become a question of vital importance. It would be difficult to give a complete list of the duties devolving upon them. The principal duties are (1) the collection of municipal and state taxes, (2) the establishment and care of public schools, (3) the administration of justice, (4) police supervision, (5) the support of a fire department, (6) the care of the streets, (7) of street gas and electric lighting, (8) of sewerage, (9) of the water supply, (10) of public parks, (11) of sanitation and public health, (12) of prisons, (13) the supervision of the liquor traffic, (14) the regulation of street railways, (15) the enforcement of building

regulations, (16) the supervision of charities, hospitals, asylums, etc.

The form of government of all our large cities is much the same. It is substantially a reproduction, in form, of the state governments. First, there is a mayor, who is the chief executive, and is elected directly by the people of the city. His term of office is sometimes only one year, though more often two, three, or four years. In almost all cases he has a veto on acts of the city legislature, which veto may, however, be overridden by a two-thirds vote.

Other subordinate officials are, the treasurer, collector of taxes, chief of police, health officer, etc. They are in part elected by the people, in part appointed by the mayor, or appointed by the city legislature. Practice varies in different cities.

City legislatures are of one or two houses. The larger cities usually have two houses, and the smaller cities one house.

The legislature is usually called the City Council, the upper branch the Board of Aldermen, and the lower and more numerous branch, the Common Council. The members of the city council are elected by the people. The acts of the council are called ordinances. They are not sufficiently general to merit the designation of laws.

City judges are usually elected by the people. The administration of the various duties of municipal government are generally given to special boards of officers, as the police department, fire department, etc. For election purposes, cities are divided into wards, and the wards into voting precincts.

Our methods of municipal government have proved the least successful of any of our institutions. Corruption and grave abuses exist in almost every one of the larger cities. Problems connected with city government are among the most important questions of our time.

CHAPTER XVII.

Government Revenue and Expenditure.

Government is an enormous business enterprise, maintained and operated by its citizens, that certain duties of a general interest and benefit may be performed. The magnitude of the work performed necessarily requires the expenditure of vast sums of money. The chief source from which these sums are derived is taxation. Taxes have been defined to be "the legally determined and legally collected contributions of individuals for meeting the necessary and general expenses of the State."[1] In the large majority of cases this is a good definition, but in a few instances it is too narrow. There are some taxes that are levied not primarily for the purpose of raising an income to meet the expenses of the government, but to subserve some other purpose. For instance, the maintenance of our high duties on articles imported into the United States from foreign countries has for its main purpose the protection of our industries from European competition. The large revenues that are derived therefrom are incidental. High liquor licenses, also, are maintained for the express purpose of lessening the consumption of intoxicating beverages.

The aim of every good government is to distribute its burdens of taxation, as well as its benefits, fairly and equitably among its citizens. It is the duty of every citizen to assist in the realization of this aim, by an intelligent, honest and

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[1] Carl Knies.

disinterested vote. Equality of taxation means equality of sacrifice. Each person should contribute towards the support of the government in proportion to his means and the benefits enjoyed. It is the duty of every citizen, first to see that just and expedient tax laws are passed, then to pay his proper proportion, and lastly, to see that his neighbors likewise contribute their share. To obtain an equitable system of government revenue and expenditure has been the great motive force which, in the past, has urged the people forward in their efforts to secure popular forms of government.

The power to tax is legislative, and, according to our theory, can be exercised only by representatives directly elected by the people. The refusal of England in the last century to extend this principle of "no taxation without representation" to her colonies in America, lost her these possessions. A government to be stable and efficient must possess adequate powers for the collection of its revenue. The miserable condition to which the old Confederation was reduced by reason of the inadequacy of its powers in this respect, has already been discussed. Says Fiske: "Between the old Continental Congress and the government under which we have lived since 1789, the differences were many; but by far the most essential difference was that the new government could raise money by taxation, and was thus enabled properly to carry on the work of governing."[1]

The sources of government revenue other than taxes, are various, and differ in different countries. In our consideration of the revenues and expenditures of our national, state, and local governments we shall have occasion to notice the various means by which their treasuries are filled.

The Federal Government raises its revenues independently of the other governing bodies, from different sources, and by a different set of officials. Besides taxation, the

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[1] *Civil Government*, p. 77.

principal source of revenue is from the sale of public lands. Federal taxes are of two kinds:

1. Customs duties.
2. Excise or internal revenue duties.

Of these, much the greater sum is raised from customs duties. For the year 1889,[1] the total net receipts were $387,050,058. Of this $223,832,741 was derived from customs, and $130,894,434 from the internal revenue duties. The sale of public lands yielded in that year $8,038,651. The miscellaneous revenues amounted to $24,297,151.

Customs or tariff duties are taxes which have to be paid on a large class of goods imported into this country from foreign countries. These charges are collected by Government collectors, stationed in all our principal seaport cities, who inspect all incoming vessels and determine the amount to be paid, according to the rate determined by Congress. This system constitutes the so-called protective tariff policy of our country. Those commodities not so taxed are said to be on the "free list." How much, and on what articles these duties shall be levied, is the question upon which the Republican and Democratic parties differ; the former favoring high, and the latter low rates, that is to say merely enough to support the Government, or, as it is termed, "a tariff for revenue only."

Internal revenue duties are those taxes collected by the government from its own citizens upon a small class of articles produced in this country. The chief items of this class are distilled liquors, tobacco, and oleomargarine. In 1889, out of the $130,894,434 received from internal revenue, there was derived from spirits and fermented liquor $98,036,041; tobacco, $31,866,861; oleomargarine and miscellaneous, $991,-532. These duties are collected by Government collectors stationed in every United States district, who visit the distilleries, collect the taxes, and see that the law is enforced. In

[1] For fiscal purposes the year begins July 1st.

several Southern States attempts to evade the law are very frequent and difficult of detection. The expenses of the vast postal system conducted by the Federal Government are very nearly defrayed by the charges made for postage, and the amount received by fees more than equals the expense of the Patent Office.

The State and Local Taxes are generally, for convenience, collected at the same time, and by the same officials, but independently of the Federal government. The Constitution of the United States forbids the States to derive a revenue from duty upon goods imported or exported. The States are, therefore, for the most part, restricted to a direct tax on property for the support of their governments.

The general method for raising this tax is as follows:

The legislature of the State, having determined what income is needed, apportion this sum among the counties, or, in New England, directly among the townships, in proportion to the value of the property situated within them, or establish a certain percentage tax on all property, to be collected in the same manner. So, similarly, the counties apportion among the cities and townships within their areas, in proportion to the value of their taxable property, not only what they have to pay to the State, but also the sums they have to raise for county purposes. Thus when the township or city authorities assess and collect taxes from the individual citizens, they collect at one and the same time three distinct taxes—the State tax, the county tax, and the city or township tax. Retaining the last for local purposes, they hand on the two former to the county authorities, who, in turn, retain the county tax, handing on to the State what it requires. Thus trouble and expense are saved in the process of collection, and the citizen sees on one tax paper all that he has to pay. The chief tax is the property tax, based on a valuation of property, and generally of all property, real and personal. Of this, by far the greater sum is realized from the tax on real property, (land and buildings on it). Cities and other local subdi-

visions, as has been stated, are raising their revenues more and more from the sale, taxation, or operation of such public franchises and rights as street-car lines, gas and water-works. Those who fix the value of taxable property and thus determine the amount the owners are to pay, are called assessors. Those collecting taxes are called collectors. The revenue of the States is seldom large in proportion to the wealth and number of the inhabitants, because the chief burden of administration is borne not by the States, but by the Federal government, on the one hand, and the local subdivisions of the States on the other. The total revenue of all the States is barely one-third that of the Federal government.

The Expenditures of all the governing bodies, Federal, State, and local, are kept entirely independent of each other. Those of the Federal government are for the benefit of all the States, while those of the other bodies are only for their own individual benefit. The Federal government receives much more than it expends, and has yearly a surplus on hand in the Treasury. The States and local bodies have in the past expended more than their revenues, making up their deficiency by loans on their credit.

The chief objects of Federal expenditure (in addition to the postal system already considered and for the most part supported by its own revenue) are: 1st, interest on the public debt; 2d, pensions to disabled soldiers; 3d, for the support of the civil branch of the government; 4th, war and naval expenditures.

Total expenditures for the year 1889 were $299,288,988. The chief items were:

1. Interest on the public debt, . .	$41,000,484
2. Pensions, ...	87,624,779
3. Civil service, ...	80,664,064
4. War and Navy, ...	65,815,079
5. Indians, ...	6,892,207

Money can be expended by the government only after it has been appropriated by Congress in its annual appropriation

bills. The appropriation of supplies by Congress is the most important business that it transacts. Every year the heads of all the different departments frame estimates of the amounts of money needed to support their departments during the following year, which estimates they send to the Secretary of the Treasury, who, after considering and revising them, transmits them to Congress in his "Annual Letter." This letter is considered by the Appropriation Committee, whose duty it is to consider and frame bills for the appropriation of moneys. Though guided by these estimates, supplies frequently depart widely from them. After being reported to the House and passed, money bills are sent to the Senate, where they are invariably amended by increasing the appropriations and are returned to the House. A conference committee is then appointed from the House and Senate Committees on Appropriations, who, after mutual concessions, agree upon such appropriations as will be passed by both houses. The House then amends the bill as agreed upon, passes it, and sends it to the Senate again, which in turn passes it, and sends it to the President for his signature. All bills for raising money must, by the Constitution, originate in the House. Besides the appropriations for the expenses of government there is annually authorized a large expenditure for improvement of rivers and harbors. Many of the expenditures authorized by these bills are undoubtedly unnecessary, but they are passed by general consent of the members, each of whom desires to increase his popularity at home by getting public money spent in his district.

The expenses of the State governments are not heavy, and are devoted to but few objects. The chief expenditures are for:—(1) the salaries of officials; (2) judicial expenditures; (3) the State volunteer militia; (4) grants to public schools; (5) public charities and institutions, as prisons, insane asylums, etc., (6) interest on State debts; (7) internal improvements and public buildings.

The methods of appropriations are similar to those employed by the Federal government.

The expenditures of the local bodies, and particularly cities, are much larger, in proportion to their population, than those of the States, and are increasing at a greater rate than the increase of population. The objects of expenditure are numerous and very important. The chief ones are: (1) Interest on local debts; (2) maintenance and care of the streets and roads; (3) lighting of streets; (4) police; (5) salaries of officials.

The following are outlines of the receipts and expenditures of the State of Maryland for 1888, and for the City of Baltimore for 1887. These figures are given not because they of themselves possess any especial importance, but because from them can be obtained an idea of the activity of a typical State and city.

Maryland.[1]—The total receipts from all sources were $2,542,130; and there was paid out $2,016,060. The chief receipts were from:

General Taxes,	$793,301
Licenses,	487,969
Corporation Tax,	73,553
Railroad Tax,	58,455
Inheritance Tax,	57,767
Income from Stocks and Bonds owned,	206,175
Fees,	17,585

Baltimore.[2]—The gross receipts into the treasury for the year ending December 31, 1887, were $8,446,439, and were chiefly from the following sources:

Taxes,	$4,210,112
Public schools, tuition fees, etc.,	6,766
Market houses, rent of stalls,	58,287
Wharfage and rent of wharves,	33,561

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[1] Finance Statistics of the American Commonwealths: E. R. Seligman. Publications of Am. Statistical Asso., Dec., 1889.

[2] R. T. Ely, *Taxation in Am. States and Cities.*

General licenses,	44,609
Auction duties,	7,431
Dividends on stock in B. & O. R. R.,	130,000
Water rents,	745,446
Passenger railway companies,	132,167
From the State for public schools,	147,403
Temporary loan,	1,510,000
Receipts to pay interest on loans,	896,704
Sale of stock,	243,285

The total disbursements were $8,403,930. Of this $4,541,357 was spent on account of expenses of city government, the following being the principal items of expense:

Interest on the public debt,	$915,987
Expenses of law courts,	118,906
Expenses of jail, magistrates, &c.,	103,587
Public schools (less amount paid by State),	594,089
Expenses of poor,	210,739
Police department,	702,882
Street-cleaning department,	263,934
Fire department,	214,226
Street lighting,	221,203
Parks, &c.,	52,080
Salaries,	72,624
City council,	52,925

Nearly all of our State and local governments, as well as the national government, have contracted large public debts, the interest payments upon which constitute one of the chief items in their lists of expenditures. The present debt of the Federal Government is largely the result of the enormous expenditures occasioned by the Civil War. In 1865, August 31, it reached its highest point $2,381,530,294, with an annual interest charge of $150,977,697. Since then it has been steadily reduced until in 1889 the total interest-bearing debt was but $829,853,990, with an annual interest charge of $33,752,354.

The principal of the national debt is mainly in the form of interest-bearing bonds held by the National banks and private individuals. These bonds are of various denominations and are promises of the government to pay the sums named on their face, at the expiration of a certain period. The bonds at present unpaid, and as such constituting the major portion of our national debt, are principally of two kinds; those bearing four and one-half per cent. annual interest and falling due in 1891, and those bearing four per cent. interest and falling due in 1907.

The debts of most of the States were contracted by ill-advised and untimely systems of internal improvements. The total state indebtedness June 1, 1890, as shown by the Eleventh Census, was $238,396,590, a decrease of slightly over $58,000,000 in ten years. The tendency now seems to be for States to withdraw from the money market as borrowers, and for the county and city governments to take their place.

The local debts are very large, and have shown a marked increase during the last twenty years. They have been for the most part incurred in improvements and construction of public works, which have in most instances well repaid the debts incurred.

CHAPTER XVIII.

Money.[1]

No man by himself produces everything he wants to use, but devotes his time to the production of some few things, and the surplus that he does not use, he exchanges for other things made by other men. In rude stages of society this is done by a direct exchange of one commodity for another, *e. g.* so much wheat or corn for a gun or plow. This is a very imperfect and cumbersome method, which cannot be employed in our present complicated transactions of buying and selling. There thus early developed the use of money, or the practice of referring the value of all things to one standard, usually the precious metals: so that, instead of trading 20 bushels of corn for a plow, where it would be necessary to go to the great trouble of finding a man who had a plow, and also wanted your corn, you sell it for so much money, and with this money you buy a plow. Money is thus but a medium of exchange and a standard of value.

In the United States, as in most nations, money has always been made by the Government, and the Government alone, so that one certain fixed system may prevail. For the sake of convenience, money is made of various kinds and denominations, and United States money may conveniently be regarded under the five following divisions:

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[1] In the preparation of this article, much assistance has been derived from an article by H. C. Adams contributed to the *Chautauquan.*

1. ***Gold Coin, Gold Bullion, and Gold Certificates.***— There are six gold coins: (1) the eagle, $10 piece; (2) the double eagle, $20 piece; (3) the half eagle, $5; (4) the quarter eagle, $2.50; (5) the $3 piece, and (6) the $1 piece. The three last are but little used. The gold bullion, or gold in bars and blocks uncoined, is for all practical purposes as good as the coin, and in foreign trade is much used, it being more convenient to handle. Besides the gold coin and bullion there are in circulation gold certificates. These are paper, the same in general appearance as the ordinary bank-note, and certify that an equivalent amount of gold has been deposited with the Treasurer of the United States, and that the holder of the certificate has the right to obtain the gold for it at any time. This does not increase the amount of money in circulation, as for every one issued just so much coin is withdrawn and stowed away in the Treasury. The certificates are used simply for convenience, and in order to avoid the necessary wear of the coin if in constant use. These certificates are of the denomination of $20.

2. ***Silver Dollars and Silver Certificates.***—There is no silver bullion circulating as money, for a silver dollar does not contain a dollar's worth of silver, as the gold dollar does of gold, and the silver bullion is thus of different value (less value), according to weight, than the silver dollar. The silver certificates are similar to the gold certificates, already described, and certify that an equivalent amount of silver has been deposited in the Treasury.

3. ***Subsidiary and Minor Coins.***—All coins of a lower denomination than $1 belong to one or the other of these two classes. There are three subsidiary coins, the fifty cent, the twenty-five cent, and the ten cent pieces. The three cent piece is no longer coined. All other coins are minor coins. The peculiarity of the subsidiary and minor coins is that they are, as compared with the standard coins (gold and silver dollars), of a greater value than the value of the metal they contain. The subsidiary coins are legal-tender to the amount

of $10, the minor to the extent of twenty-five cents. By legal-tender is meant that the government has ordered that it must be received in payment of all debts and articles bought. Gold coin and the silver dollars and certificates are legal-tender to any amount.

4. ***Treasury Notes.***—Under this head are included that form of money ordinarily known as "greenbacks," from the color of their backs. They were originally issued during the civil war, and are promissory notes on the part of the government, and as such constitute a portion of the debt of the government. They are paper, which of itself is of no value, and no coin is deposited in the Treasury which they represent, as in the case of the gold and silver certificates. They thus cost the government nothing, and, as they are made legal-tender, and paid out by the government, they were just so much clear gain to it. At first they were not redeemable, *i. e.*, exchangeable for coin at the Treasury, but since 1879 they are, and are therefore just as valuable now as any other form of money, though formerly worth much less than their face value. One hundred million dollars in gold is kept on deposit in the Treasury for their redemption.

5. ***Notes of National Banks.***—This is the one form of money that is not issued directly by the Federal government, but through the agency of what is called our "National Banking System," which may be thus described: A national bank can be organized by any number of men, provided the capital stock of the bank is at least $100,000. One-third of the capital must then be invested in government bonds and deposited in the United States Treasury. The bank may then issue notes to the extent of 90 per cent. of such deposit. Such notes are thus amply secured by the deposits with the government. The government guarantees their payment, and so they circulate as well as the certificates issued directly by the government. Thus a great deal of the paper money in circulation is issued by the national banks, which must, on demand, be redeemed with coin, and, in case of failure of the

banks, are paid by the government, which reimburses itself from the deposits. A bank-note differs from a Treasury note in two particulars. The Treasury note or "greenback" is a promise of the government, and is legal-tender in payment of all private debts; the bank-note is the promise of a private company. and is not legal-tender. A bank-note is said to be paid when the bank gives a greenback or coin for it. A greenback is said to be paid or redeemed when the government gives gold for it.

The following figures, taken from the report of the Secretary of the Treasury for 1889, give the amounts of the various sorts of money described in the foregoing, which were then in the Treasury, in the banks, and in the hands of the people:

Gold coin and gold bullion, . . .	$680,063,505
Silver coin and silver bullion, . .	343,947,093
U. S. Treasury notes, ...	346,681,000
National Bank-notes, ...	211,378,963
Subsidiary coins, ...	76,601,836

It will be noticed that gold and silver certificates are not included, for, as explained, they merely represent an equal amount of coin or bullion on deposit.

The total amount of money is thus approximately $1,660,000,000, which, divided by the total population, gives about $27 per capita. It should be borne in mind in connection with these figures that other devices, such as checks, drafts, bills of exchange, and other forms of credit, are used side by side with money in carrying on trade and serving the same purposes.

By the Compromise Silver Bill of July 14, 1890, provision was made for a new kind of paper money. By this act the Secretary of the Treasury was directed to purchase, from time to time, silver bullion to the amount of 4,500,000 ounces each month, and to issue in payment for such purchases Treasury notes; these notes so issued to be redeemable on demand in coin, and to be a legal tender in payment of all debts, public and private, except where otherwise expressly stipulated.

CHAPTER XIX.

Public Lands of the United States.

Prior to 1781 but six of the original thirteen States—New Hampshire, Rhode Island, Maryland, Pennsylvania, New Jersey, and Delaware—had exactly defined boundaries. The others claimed lands of various extents, stretching to the Mississippi River, or even to the Pacific Ocean. The title to to all this land was then in the individual States, and the National Government, as such, had no land of its own. This question of the ownership of the western land was one of the subjects of controversy and discontent between the States. It delayed the adoption of the Articles of Confederation for some time. Those States with little or no land regarded with jealousy their more fortunate neighbors, and would not consent to a union until a settlement or understanding was reached.

The Articles of Confederation were adopted only after assurance was made that all the public lands would be ceded to the Federal Government. This was finally done by the States.

The Government formed under the Constitution succeeded to all this land, and in addition, to further cessions made by the States, the last being that of Georgia in 1802. The subsequent additions of territory were made directly to the United States, and not to the States, and all land thus gained was held as public land to be disposed of by Congress.

While the area of the United States is 3,603,884 square miles, the public domain which has been acquired by cession, purchase, or conquest, to be disposed of by the Government

as it desires, has amounted to 2,708,388 square miles, or about two-thirds of the total area of the country.

The absolute title to this land, as before stated, became vested in the United States Government. The disposal of these lands has always been under the sole power and control of Congress.

This land was all thinly populated by Indian tribes, who merely hunted over it, leaving unimproved its natural fertility and vast mineral resources. These tribes, being actual occupants, were recognized to have a sort of half interest in the land. This half ownership was always first extinguished by the United States by purchase for small sums, or by the granting of certain privileges, etc., before it was opened up for settlement and occupation by the white man. Land is still held, to a considerable extent, in this way by the Indians. This right of the Indians can be extinguished only by the United States, as they are not allowed to sell or treat at all with individuals or States or foreign nations.

Until 1812 the affairs of the public domain were managed by the Secretary of the Treasury. In that year the office of Commissioner of the General Land Office was created, which remained a bureau under the Treasury Department until 1846. On the creation of the Interior Department in that year, Indian affairs were transferred to it, and have remained under the same management until the present time. This bureau has complete charge of all matters relating to the management and disposal of the public lands, subject to the direction of Congress.

Almost every conceivable method of disposing of this land has been followed. The Government has, however, never assumed the position of landlord and rented the land, except in one case of some mineral land, and this experiment resulted disastrously. Before the land could be disposed of, it was necessary that it should be surveyed by the Government. To do this there was adopted as early as 1776, the so-called rectangular system, which, with slight changes, has been

continued until the present time. By this system there are first surveyed a base and a meridian line, crossing each other at right angles, running north and south and east and west. From these fixed lines the land is surveyed and marked off into rectangles of six miles square, each thus containing thirty-six square miles. This is called a township. This is again divided up into sections of one square mile each or 640 acres, and this again into quarter sections of 160 acres each. In some cases these are still further subdivided.

The regulation and disposition of the public lands has been one of the chief duties imposed upon Congress.

The chief methods by which the public lands have been disposed of are as follows:

1. ***Educational Grants.***—Congress from the very first provided liberally for the establishment of common schools through grants of public lands for this purpose. As each township is surveyed one quarter section of 640 acres is set apart for common schools. This has continued from the beginning down to the present time. In addition, large grants have been made specially for the endowment of universities. Within later years land has been given to every State to found State military and agricultural colleges. Up to the year 1888, there had thus been granted for educational purposes 77,448,192 acres.

2. ***Land Bounties for Military and Naval Service.***—There have been granted by different acts bounties of public land, in the nature of pensions, to the soldiers and sailors of the United States Army, on their honorable discharge, for their service to the Government. The amount of land thus granted (1880) has been 61,028,430 acres.

3. ***To the States for Internal Improvement.***—There was granted to the States during the years from 1828 to 1846, for the improvement of rivers, building of canals, wagon roads, railroads, etc., 162,230,099 acres.

4. ***Sale of Public Land.***—Under this head there are two classes of public land—first, that which may be bought for

the minimum rate of $1.25; and, secondly, the alternate sections along the railroads (the other alternate sections being granted to the railroads), the minimum price of which is $2.50. There have been sold in all 192,584,116 acres, realizing $233,000,000.

5. ***Under the Pre-emption Acts.***—These acts, passed at various times, provide that where a man, a citizen of the United States, settles upon and cultivates for a certain length of time, a tract of land not greater than 160 acres, the United States will give him such tract.

6. ***Under the Homestead Acts.***—The homestead laws have created a better and more certain manner for settlers to acquire land than under the pre-emption acts. By these acts it is provided that any citizen who will select either 160 acres of the $1.25 land, or 80 of the $2.50 land, can then get a permit from the land office, settle on his land, and acquire a title to it.

7. ***Under the Timber Culture Act.***—This act gives to any one the right to 160 acres of the $1.25 land if he will plant 10 acres in timber, or 80 acres of the $2.50 land if he will plant 5 acres in timber.

8. ***Certain Lands to States.***—Quite a large quantity of the public land has been given to the States on account of its quality, as swamp or overflowed land, and for various reasons, to the extent of 158,417,514 acres.

9. ***Grants to Pacific and other Railroad Companies.***—The nature of these grants have already been spoken of in another chapter. From 1850 to 1872 a total of 150,504,994 acres was given for railroad construction.

CHAPTER XX.

Reconstruction.

The conclusion of the civil war in 1865 did not relieve the United States Government of its extraordinary difficulties. There was the whole South, a conquered territory, occupying the anomalous position of a district, still within the Union, yet possessing no legal state governments. The Confederate government had now been destroyed by the North, and the South was thus without a government. Four million slaves had been liberated, who were uneducated, without money, and living among people hostile to them. Congress had to provide for and protect these freedmen in their rights. The work to be done by Congress, was then:—1. To decide upon what terms and upon what conditions the seceded States should be re-admitted into the Union, and to provide for them a government until such re-admission. 2. To protect the negro.

The South, though in the Union, had at this time, of course, no representation in Congress, and consequently, the Republicans were in great majority. Unfortunately, Johnson, who succeeded to the Presidency at the death of Lincoln, though a Republican, disagreed with his party, and legislation upon this subject was only secured by passing all acts over his veto by a two-thirds vote.

After much discussion, the first Reconstruction Bill, "to provide for the more efficient government of the rebel States," was passed in 1867, vetoed by the President, and passed over his veto. Its principal provisions were—1. The insurrectionary States were to be put under United States control, and

for this purpose divided into five military districts, over each of which the President was to appoint a commanding officer. 2. The people of the various States might hold a delegate convention, elected by the citizens who had not been deprived of the right to vote for participation in the rebellion. The convention was to prepare a new constitution, which constitution was to be then submitted to the vote of the people, and when ratified by them and approved by Congress, should go into force, and the State be entitled to representation in Congress. Before approval by Congress the constitutions adopted by the rebel States had to agree in all the following particulars: (1) abolishing slavery; (2) declaring null and void all debts created by States in aid of the rebellion; (3) renouncing all right of secession; (4) declaring the ordinance of secession which they had passed null and void; (5) giving the right to vote to all male citizens, without regard to color; (6) prohibiting the passing of any law to limit or abridge the rights of any class of citizens.

In 1868 the Fourteenth Amendment was adopted by a sufficient number of States, and was declared a part of the Constitution.

In 1871 all the States were, for the first time since 1861, represented in both houses of Congress. Reconstruction by Congress was then completed.

CHAPTER XXI.

Party Machinery.

In all the States, counties, cities, and even in the smaller subdivisions of wards, political parties are thoroughly organized, with acknowledged leaders, and under systems of rules or party government. This party government, or "machine," as it is called, has been created by no law or constitution, but is one which has been gradually formed by the voters themselves, and under which they have voluntarily placed themselves, in order better to succeed in their elections, well realizing that the best chance of success is by having all the voters of their party united on certain principles embodied in a party platform, and having candidates so nominated that the whole party will recognize them as their choice.

The aims of party organization are: First, union, that is, having all voters united as to candidates and platform; and second, recruiting or the gaining of new adherents.

There are at present two opposing political parties, both striving for the control of the Government. Both have very nearly the same system of party government, but their organizations are totally distinct and separate one from the other.

There are two distinct parts of party government. They are; first, sets of committees, whose business it is to do all the work of managing elections, such as raising and applying funds for election purposes, organizing meetings, providing speakers, publishing and distributing political tracts and other information, and stirring up enthusiasm by parades and fire-

works, etc. They have also the important duty of calling together nominating conventions.

The second part of the "machine" embraces the nominating conventions, which propose the names of the candidates whom their party are to support for election. These assemblies are called together by the committees periodically, for the purpose of specific nominations, and cease to exist as soon as their work is done. Besides nominating candidates, the conventions draw up the platform, which is a statement of party principles, beliefs, and pledges. To provide for their reassembling next time, they also elect a new committee, for the next term; and also send delegates to the next higher convention. Thus are found committees and a nominating convention, managing not only national and state elections, but even arranging and managing elections in the smaller electoral subdivisions.

There is a committee and a nominating convention for every city, for every county, for every district, and for every State. There are, then, throughout the whole United States, such committees, each controlling its own local affairs, but yet all related to each other, thus forming one vast organized system.

Beginning with the smallest and lowest, let us show their mutual connections and workings. Starting, then, with the township convention, or convention of a city ward, we find that all the voters of the party are called together on a certain day by a committee (which was chosen at the preceding meeting) for the purpose of nominating candidates for local affairs, and naming delegates to represent them at the city or county convention. The city or county convention, composed of these men, is called together by the city or county committee. It first nominates candidates for the city or county offices, and selects delegates to the state convention, and also provides for the next meeting by the election of a new committee for the ensuing year. In similar manner, just before every state election, the state convention, composed of city and county

delegates, is called together by the state central committee. Here are nominated men for state officers; a new committee is appointed to manage state elections; and also, once every four years, the important duty of selecting Presidential electors is performed. The Democrats also select, in this state convention, their delegates to the National Presidential Nominating Convention. The Republicans select but four delegates from each State in state conventions, the remainder being appointed in district conventions. Following the same method the National Central Committee calls together a National Convention of all the delegates which have been appointed by the State, for the purpose of (1) nominating candidates for their party for President and Vice President; (2) drawing up and accepting a party platform; (3) selecting a new National Central Committee for the next four years, which committee is to manage the election campaign and call the next National Convention.

CHAPTER XXII.

National Conventions and Presidential Campaigns.

History and Development of the National Convention.—In the Presidential elections of 1789 and 1792 there was no necessity for regular party nominations, as the whole people were practically unanimous in favor of Washington. Likewise in 1796 it was so well understood that Adams was the man desired by the Federalists, and Jefferson by the Democrats, that formal nominations were not required. But, commencing with 1800, political parties were more divided in their choice, and some method was demanded by which it might be decided on whom the party should unite. From 1800 to 1820 this demand was met by nominations made by Congressmen, in caucuses, or private meetings, of the members of each party. This method finally proved unsatisfactory to the country, but from 1824–1835 no new and better method was invented, and nominations were made rather irregularly, each State legislature proposing the name of its favorite. This method of nomination naturally failed to unite the voters of the party, in all the different States, on one man, and had to be abandoned. After a failure to revive nomination for President by Congressional caucuses, a new method was developed and adopted, which was by National Nominating Conventions, such as we have to-day. The introduction of this last plan may fairly be dated at 1840. National Conventions were first held at Eastern cities, but are now held further West, to accommodate the shifting center of population, Chicago being the favorite city.

The National Convention is composed of delegates from all the States. Each State sends twice as many delegates as it has representatives in the National Senate and House of Representatives, thus making a total now of 802. In addition to these, the Republicans allow two delegates from each of the Territories.

Method of Procedure.—As soon as the State and Territorial delegations arrive in the city they each elect a member for the new National Central Committee for the next term. Inside of this committee is chosen an executive committee, which, in reality, does all the work of conducting the campaign. The members of this committee are almost always men of wealth, and are expected to contribute liberally to the campaign fund.

The business of the National Convention is commenced by the chairman of the National Central Committee calling the convention to order. A temporary chairman is then chosen, who appoints a "committee on credentials," whose duty it is to decide which delegation shall be admitted in case two delegations are sent from the same State, both claiming admittance as representing the party in that State. A "committee on resolutions" is also appointed to prepare the party platform. The next day the permanent chairman is appointed. The platform is then read and adopted, or amended and adopted. There is next an alphabetical roll-call of the States, when names are proposed and seconded for nomination as candidates for President. The average number of names proposed is seven or eight, though sometimes as many as twelve are offered. As each man is proposed the delegate presenting his name extols him in a laudatory speech, and gives reasons why his man will make a strong candidate and an able President. Voting then commences. Each delegate has one vote. In the Republican convention a majority of the whole number of the delegates voting for one man is required before a nomination is reached, while the Democrats require a two-thirds vote. Sometimes a nomination is made on the first bal-

lot, while at other times the convention has been so divided that as many as 53 ballots have been required, as was the case when the Whigs nominated Scott. Forty-nine ballots were needed when Pierce was nominated by the Democrats. In 1888 Cleveland was nominated by the Democrats by acclamation, no vote being necessary to show the wishes of the delegates. Harrison was nominated by the Republicans on the eighth ballot.

A candidate for President having been selected, a Vice President is nominated in a similar manner, though generally with much less trouble, and the work of the convention is ended.

The candidates are now put before the people by their respective parties. The people, of course, do not vote directly for them, but what amounts to the same thing, vote for electors, who are pledged to vote for them. A vigorous campaign of four months then follows, until election day, in the first week in November.

Each candidate, a short time after his nomination, is expected to publish a letter of acceptance, in which he expresses his full confidence and belief in the platform which his party has adopted, discloses his views, and outlines what his future policy will be if he is elected.

To recapitulate, then, in a few words, let us see how a President is nominated and elected.

In nominating the President each voter in caucus or primary meeting shares in choosing delegates to the ward convention, which chooses delegates to the city or county convention, which in turn sends delegates to the district conventions. In these, delegates are chosen for the State conventions, where Presidential electors are appointed, and also the delegates sent to the National Convention.

In the National Convention, composed of delegates sent from the State conventions and Territories, the Presidential candidate is nominated. The electors are elected by the people, who in turn elect the nominees of their National

Convention. If State officers, as Governor, Attorney-General, Secretary of State, Treasurer, etc., are to be elected, they are nominated in the State conventions and elected by the people.

Besides counties, townships, and cities, States have other sub-divisions for political purposes. Thus the whole State is divided into senatorial districts, each one of which sends one Senator to the State legislature, and also into smaller districts, each one of which sends one member to the lower house of the State legislature. Usually a senatorial district is one or more counties, except in the case of large cities, which may in itself contain two or more senatorial districts.

CHAPTER XXIII.

Introduction to the Study of the History of Political Parties in the United States.

A knowledge of the nature of our federal government, and its relations to the State Governments, of which it is composed, is a prerequisite to an understanding of the history of our political parties.

The government of the United States is a federal republic, first formed by the voluntary union of thirteen commonwealths. At present it is composed of forty-four united States. It is a government of enumerated powers, and in this respect differs radically from the governments of the individual States. As all agree, the Federal Government possesses only those powers specifically granted to it by the constitution. The States possess all powers except those granted to the National Government, and those not prohibited to them by the terms of the constitution. When the government of the United States desires to exercise a power, it must be proven that it was the intention of the framers of the constitution, and so expressed in that instrument, that it should possess such a power. The States in the exercise of their powers need only show that they have not resigned that power. If there be any dispute as to the constitutionality of an act of either Congress or a State legislature, the point is decided in the final instance by the Supreme Court of the United States.

In the political history of our country since the adoption of the constitution, there have been ever present two great constitutional questions, in the conflicting answers to which we

must seek the origin and creeds of our great political parties. If we can gain a proper conception of the character of these two questions, we shall have taken a long step towards the understanding of the reasons for the conduct of the various opposing parties, and the basis of the disputes arising between them. These have been the two questions. First, What is the extent of the powers granted by the constitution to the National Government? Second, What is the real nature of our Union; and, arising under this problem, What is the extent to which the States are justified in opposing what they believe to be unconstitutional acts on the part of the National Government; and, Can a State or States, as a last resort, withdraw from the Union? The remainder of this chapter will be mainly devoted to a more particular examination of these questions.

What are the legitimate powers of the United States Government?

The United States government was the result of the union of thirteen independent colonies—a union voluntary on the part of the colonies, yet forced upon them by the evident need of some central power strong enough to enforce obedience at home and demand respect abroad. The determination of what and how many the national powers should be, was the work of the Constitutional Convention. Of the difficulties of this task we have already spoken.

In forming a scheme for a central government, there was the double necessity of creating a government strong enough to perform the duties for which it was established, and yet not so strong as to endanger the free self-government of the States. The delicate point to be adjusted was to give to the Federal Government only such powers as were necessary for the establishment of an effective National Government, and, as far as possible, to retain in the States their full governmental powers; in other words, to harmonize federal strength with State sovereignty.

The fear exhibited by the States in the debates preceding the adoption and ratification of the constitution of 1787, that the National Government might become too strong at the expense of their own powers of government, was not set at rest by the compromises obtained in the convention, nor by the eleven amendments adopted soon after the inauguration of the new government. The reason for the continuance of this fear is that the constitution is so worded that the powers of the general government are not precisely fixed.

The statement sometimes loosely made that a description of our government is contained in the constitution, is apt to be misleading. The constitution has served rather as a foundation upon which to build the government, than as an entire framework. As a distinguished writer has termed it, "The constitution was meant only as a scheme in outline, to be filled up afterwards, and from time to time, by legislation."

A description of our present form of government is far from being contained in the instrument adopted in 1788. For example, the constitution makes no mention of how business shall be transacted by the legislature. Committee Government in Congress owes its existence to no provision of the constitution. The only mention made in the constitution of the Speaker of the House, to-day the most powerful officer in the legislature, is where it is provided that "The House of Representatives shall choose their speaker and other officers." All executive departments—the State, War, Navy, Treasury, Post Office, Interior, Justice, Agriculture, and Labor—have been created from time to time by act of Congress. Regarding the structure and number of federal courts, the constitution merely provides that "The judicial power of the United States shall be vested in one Supreme Court, and in such inferior courts as Congress may from time to time ordain and establish." Our elaborate system of district, circuit, and territorial courts, rests solely upon congressional enactments. So, too, the constitution gives to Congress the control

of territories, but does not provide how that control shall be exercised.

The framers of our constitution were wise in not attempting to specify more particularly than they did, the manner in which the several powers granted to the Federal Government should be exercised. They realized that they were forming a scheme that was to endure for many years, and that if it was to be capable of meeting the needs of a changing and rapidly growing country, it would have to be elastic, and contain within itself the power of adapting itself to new needs and conditions. To secure the beneficial execution of the powers granted, Congress was given the power of selecting appropriate means. To have refused the grant of this power, would have been to attempt to provide by unchangeable rule for emergencies that could by no possibilities be foreseen. Or, as Chief Justice Marshall has put it, "It would have been to deprive the legislature of the capacity to avail itself of experience, to exercise its reason, and to accommodate its legislation to circumstances."

After enumerating the various particular powers given to the Federal Legislature, the constitution further says (Art. I, Sec. 8) "and [shall have power] to make all laws which shall be necessary and proper for carrying into execution the foregoing powers, and all other powers vested by this constitution in the government of the United States, or in any department or officer thereof." This is the clause under whose authorization all those powers have been assumed, and functions exercised, that have made the United States government of to-day so different from that of 1789.

The general rule is, as has been said, that the United States government possesses only those powers granted to it by the constitution. But here, in this clause just quoted, is a general grant of all powers necessary or proper for carrying into effect any of the powers particularly granted. Who or what is to decide just what powers are necessary and proper for the accomplishment of this object? Naturally people have not been

able to agree upon the question of just what powers are constitutional or expedient as "implied" under this title of "necessary and proper" and this question has been largely instrumental in dividing the people in opposing political parties. There has always been a party, the members of which, favoring great powers for the States rather than for the Federal Government, have been "strict constructionists," and have advocated a close and narrow interpretation of this clause of "implied powers." From their desire to retain in the State governments as many powers as possible, they have been known as the "States' Rights Party." Opposing them has been the party of "loose constructionists," the members of which have held to a free, liberal interpretation of the constitution, and have endeavored to increase the power of the Federal Government. There have never been political parties styling themselves "Strict Constructionists" and "Loose Constructionists," for these are terms that have been used not as titles, but as definitions of different principles of constitutional interpretation. But by whatever name they may have been known, there have been, during the greater part of our history, these two political parties, the one holding to the principle of strict construction and States' Rights, and the other to that of loose construction and federal power.

The second fundamental question spoken of in the beginning of this chapter as underlying national politics, is concerning the nature of our union and the rights of state nullification and secession.

A final answer to these questions cannot of course be here attempted, but that which can be done, is to state in a few words just what their meaning is, and the points upon which they have turned. When we come to the consideration of the course of politics in the United States we shall see the answers that history has given to them.

The government of the United States is the judge of its own powers, for it is in its own supreme judicial tribunal that the constitutionality of both State and Federal laws is finally

determined. More than once has a practical answer been demanded to the question What is to be done by a State or States when, in their estimation, the National Government has transcended its powers and legislated in an unconstitutional manner? Obedience, nullification, or, in the last resort, secession from the Union, have been the various alternatives that have offered themselves to the States. Different views of the nature of our Union have sustained the propriety of the selection of different ones of these alternatives.

According to the nullification theory, the constitution is held to be of the nature of a compact between the States as one party and the Federal Government as the other; and that, as in all contracts, if the agreements contained therein are broken by the one party, the other party has the right to refuse its assent thereto. Therefore, if the United States government attempts the exercise of powers not granted in the compact, the States have the right to interpose the "rightful remedy" of "nullification." That is to say, that each State has the right to determine for itself when an unwarranted power has been assumed by the general government, and in such a case to declare the obnoxious law null and of no force within her own boundaries.

In considering the question of nullification, it is necessary to distinguish between the theory or rather method of nullification propounded by Madison and Jefferson in the Virginia and Kentucky Resolutions, from that of Calhoun brought forward at the time of South Carolina's resistance to, and attempted nullification of, the Tariff laws of 1828, and 1832. In the Virginia and Kentucky Resolutions the Alien and Sedition Acts were solemnly declared to be unconstitutional, that the Union was a compact, and the States had the right to interpose the remedy of nullification; but open resistance was not proposed. By the Jeffersonian theory, it was proposed to obtain the opinion of three-fourths of the States that the acts were unconstitutional, and thus to "nullify" them after the

manner of a constitutional amendment. Until such nullification, the laws were to be obeyed.

The Calhoun doctrine was something entirely different from this. According to his doctrine, any single State might order at once a suspension of the law within her borders, and not until three-fourths of the States in national convention had overruled the nullification could the State be forced to obey the obnoxious law. To use Calhoun's own words, his theory was, that "it belongs to the State, as a member of the Union, in her sovereign capacity in convention, to determine definitely, as far as her citizens are concerned, the extent of the obligation which she has *contracted*; and if, in her opinion, the act exercising the power in dispute be unconstitutional, to declare it null and void, which declaration would be obligatory on her citizens." The sum and substance of this was, as Von Holst has pointed out,[1] to give to one-fourth of the States the power if they saw fit to deprive the Federal Government of every power entrusted to it, that is, to alter the constitution at will.

The right of secession follows as a logical outcome of the theory of nullification rigidly carried out. Federal laws are general in their nature, and if binding anywhere, must be binding everywhere. If then, a minority of States insist on their right of nullification, the federal government will be obliged either to admit that every act of Congress is without any force in a State until it has obtained the tacit approval of the people of that State, or else it will be driven to the necessity of obtaining the enforcement of the law by arms. Such employment of force would of course be but the prelude to secession. Indeed, South Carolina, in her Ordinance of Nullification, declared that she would secede, if the United States did not repeal the obnoxious laws, or if she should attempt to enforce the collections of the tariff duties provided for by the acts in dispute.

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[1] *Constitutional History of the United States*, Vol. I, p. 474, note.

According to the Unionist view, it is held that in no case has the individual State the right to resist the operation of a federal law, much less does it possess the actual power to pass a law affecting its relation to, or continuance in, the Union. This view is supported by an interpretation of the constitution that denies to that instrument the character of a compact between the States and the National Government. The constitutional theory of this school is that the National Government was formed *by the people* as a whole, and not by the States. That the States accepted this government, but were in no sense parties to an agreement between them and the Nation. According to this view, the Union began with the first acts of resistance taken in common by the colonies, and is thus, in a sense, older than the state governments, which were not formed until after the Declaration of Independence. Also, that when the States gave in 1788 their consent to the constitution, their consent was irrevocable. Two quotations from decisions rendered by the Supreme Court of the United States will make clear the arguments and theory of the Unionists.

Said Chief Justice Marshall:[1] "The convention which promulgated the constitution was indeed elected by the state legislatures, but the instrument when it came from their hands, was a mere proposal, without obligations or pretentions to it. It was reported to the then existing Congress of the United States, with a request that it might 'be submitted to a convention of delegates chosen in each State by the people thereof, under recommendation of its legislature for their assent and ratification.' This mode of proceeding was adopted, and by the conventions, by Congress, and by the state legislatures, the instrument was submitted to the people. They acted upon it in the only way in which they can act safely, effectually, and wisely on such a subject, by assenting in convention.

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[1] *McCulloch* v. *Md.*, 4 Dall., 316.

It is true they assembled in their several States, and where could they have assembled? From these conventions the constitution derives its whole authority. The government proceeds directly from the people. The assent of the States in their sovereign capacity is implied in calling the convention, and thus submitting that instrument to the people. But the people were at perfect liberty to accept or reject it, and their decision was final. It required not the affirmance of, and could not be negatived by, the state governments. The constitution when adopted was of complete obligation, and bound the state sovereignties. The government of the Union then, is emphatically and truly a government of the people. In form and in substance it emanates from them. Its powers are granted by them, and are to be exercised directly on them, and for their benefit."

Said Chief Justice Chase:[1] "The union of the States never was a purely artificial and arbitrary relation. It began among the colonies, and grew out of common origin, mutual sympathies, kindred principles, and geographical relations. It was confirmed and strengthened by the necessities of war, and received definite form and character and sanction from the articles of Confederation. By these the union was solemnly declared to 'be perpetual.' And when the articles were found to be inadequate to the exigencies of the country, the constitution was ordained 'to form a more perfect union.' It is difficult to convey the idea of indissoluble unity more clearly than by these words. What can be more indissoluble if a perpetual union made more perfect, is not? But the perpetuity and indissolubility of the union, by no means implies the loss of distinct and individual existence, or of the right of self-government by the States. . . . Without the States in Union, there could be no such political body as the United States. Not only, therefore, can there be no

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[1] *Texas* v. *White*, 7 Wall., 750.

loss of separate and independent autonomy to the States, through their union under the constitution, but it may be not unreasonably said that the preservation of the States, and the maintenance of their governments are as much within the design and care of the constitution, as the preservation of the Union and the maintenance of the National Government. The constitution in all its provisions looks to an indestructible Union composed of indestructible States."

A civil war of four years' duration has decided the Unionist theory of our government to be the one under which the Nation is to be governed. Whether or not, in point of fact, the Nation was older than the States, and the constitution not a compact, but an indissoluble Union, will always remain a question to be discussed. The dispute turns upon a point that does not admit of final determination. We can only theorize. To maintain the view that the Union is older than the States it is necessary to show that the Continental Congress was of such a character, and its powers of such a nature, that a true national government may be said to have existed before July 4, 1776, and therefore, that the Declaration of Independence and the consequent transformation of the colonies into States were not the result of the individual action of separate colonies, but of the whole people united in a nation. And, following from this, that the States were never out of the union, but that the individual colonies became States, only as belonging to the United States. Consequently that the theory of a 'compact' between the States and the United States is untenable, for at the time the United States was born, the States did not exist.[1]

To maintain the "Compact Theory" it is necessary to show that the "Continental Congress" had no properly delegated

[1] As Lincoln expressed it in his message of July 4, 1861: "The States have their *status* in the Union, and they have no other legal status. . . . The Union is older than any of the States, and in fact, it created them as States."

national powers, and to it the character of a national government could not fitly be applied, and that the colonies when they separated from England remained independent of each other, because as colonies they had been independent. Therefore, that the initial clause of the Preamble to the Constitution "We the people of the United States" referred not to all the people of the United States in their collective capacity, but to the people of the several States.

In fine, admitting, as all do, the Continental Congress to have been a revolutionary body, exercising undelegated powers, the question is, Was it, or was it not, a *de jure*, as well as *de facto* national government, and this is a question that cannot be answered absolutely.

These opposing views of the character of our constitution have been stated not with the idea of proving either of them to be the correct one, but solely to indicate the lines along which political parties have fought their battles. Thus, it is hoped, the student will be prepared for an intelligent consideration of the various political parties that have existed in the course of his country's history.

To complete the statement of the underlying causes and fundamental principles that have directed the course of our national politics, it is necessary to give at least some short account of the natural causes that have operated irresistibly to divide the North and the South in their political thoughts and actions.

Why is it that slavery flourished in the South, but languished and was gradually abolished in the North? Why is it that the stronghold of the States' Rights doctrine of nullification and of secession was in the South, and the citadel of the Unionists in the North? Why is it that to-day the debate between high and low customs duties, is, to a very considerable extent, a discussion between the New England and Middle States and the Southern States?

To all these questions a very satisfactory answer can be found in the different physical characteristics of the North

and South. The nature of the soil and climate, as well as the character of the settlers, predetermined for the Southern colonies an agricultural character, and for the colonies of the North a commercial and industrial character; and, already by the end of the eighteenth century we find in them a marked difference of political and social life.

From the very start, the South, favored by a mild climate, rich soil, and broad, low-lying valleys, developed an agricultural life. Slavery was introduced at an early date, and flourished, the warm climate being congenial to the negro, and the rude manual labor of the field suited to his meagre capabilities. The result of these influences was to develop in the South a system of large ill-worked manors or estates. The predominence of slave labor, discouraged the immigration of free labor, and the South remained comparatively thinly settled. The moral effect of slavery upon the white population was bad. Habits of thriftlessness and laziness were engendered among the free population, and their social relations corrupted.

In the North, an indented coast with many good harbors, a rugged soil, and a wintry climate, encouraged the development of a commercial and manufacturing life. Slave labor here proved itself scarcely profitable, neither the climate nor the nature of the work required, being suited to the frames and abilities of the African. As compared with the South, the North soon became thickly settled, and largely as a result of this, adopted the small area of the town or township as its most important unit of local government, instead of the larger area, the county, used in the South. This essential difference in the system of local government in the North, from that of the South, has remained unchanged to this day, and has exercised great influence upon the political habits of the peoples of these two sections.

At the time of the adoption of the constitution, these differences between the northern and southern colonies were not so great as they were soon to become. As contrasted with the

North, the agricultural character of the South was already marked, but the designation of these two sections as "free" and "slave" states had not yet come into use. It was the remarkable development of the cultivation of cotton consequent upon the invention of Whitney's cotton gin in 1793, that gave the tremendous impetus to the increase of slavery in the South. While prior to the introduction of this machine, scarcely a single pound of cotton could be separated from the seed by a man in a day, Whitney's gin made it possible to prepare for market three hundred and fifty pounds per day. The nature of the cotton plant rendered it peculiarly fitted to the climate and soil of the South, and the ease with which it could be cultivated and prepared for market, made the application of slave labor extremely profitable. In 1789 many of the southern states exhibited evidences of a desire and intention to ultimately abolish slavery, but from this time we hear nothing more of this. After 1800 the number of slaves increased rapidly. The census of 1790 showed in the southern colonies 650,000, while that of 1820 showed the number to be over 1,580,000. From 1800 to 1865 the political life of the South is largely explainable by the interest of its people in, and devotion to, the institution of slavery.

The promptness with which, irrespective of party affiliations, the people of the North assumed the anti-slavery attitude and those of the South placed themselves under the pro-slavery banner, at the time of the Missouri contest in 1820, shows the extent to which these two sections of the United States were already divided upon this great question. The South, retarded in its growth by the employment of slave labor, as compared with the North already exhibited an example of arrested development, and her politicians saw that if the balance of power between the slave-holding and the non-slave-holding States was to be maintained, a wider field for the extension of their favorite institution would have to be provided. It is in the light of this motive that the desire of the South for the annexation of Cuba and of Texas, even at the expense of a

war with Mexico, is to be interpreted. The compromise of 1820 satisfied the demands of the slavocracy for a time, but only for a time. In 1850 the South again demanded, and obtained concessions. It required a civil war to demonstrate to us the futility of endeavoring to avert by compromise the conflict that was irrepressible between the North and South so long as slavery existed in the one, and was reprobated in the other.

The different attitudes assumed at the present day by the North and South in regard to the Tariff question, is explainable by the difference in the industrial life of these two sections. The North is essentially a manufacturing centre, and, as such, demands high import duties as a protection to her manufacturers and merchants. The South is, as a whole, agricultural, and favors low duties with the idea of thus extending foreign trade, and affording a larger market for the sale of her raw products. A striking proof of the influence of the industrial life of a section in determining its attitude towards the tariff, is seen in the change of front of Massachusetts after 1824 from free-trade to protection, this change being wholly due to the predominating influence acquired by her manufactures over her commerce and agriculture.

FINIS.

BIBLIOGRAPHICAL NOTES.

For the assistance of those who may desire a fuller acquaintance with the administrative methods of our Federal and State Governments than is to be obtained from this book, these bibliographical notes are appended. Not only the authorities actually consulted in the preparation of this monograph are given, but mention is also made of the most reliable and accessible sources of information upon the more important topics germane to the study of Government and Administration. In arrangement, the notes follow the order of topics used in the text.

General Works upon United States Government.

Worthy of first mention is the admirable work of James Bryce, *The American Commonwealth*, 2 vols., 1888. To the student of American institutions and administration these two volumes are indispensable. In them is contained the best and latest scientific exposition of our political institutions as they exist to-day. The only criticism that can be made regarding the work is that the executive departments have not received sufficient attention as regards the details of their administration, nor the practical and scientific value of the work performed by their numerous bureaus. Interesting from an historical point of view is De Tocqueville's *Democracy in America*, now fifty years old. Lalor's *Encyclopædia of Political Science, Political Economy and American History* is by far the best work for reference. The principal articles in the field of political science are contributed by Dr. J. C. Bluntschli, those upon United States History by the late Prof. Alexander Johnston, and those upon Federal Administration by A. R. Spofford, Librarian of Congress.

Bannatyne's *Hand-book of Republican Institutions in the United States* is an authoritative work based upon federal and state laws, and other authoritative sources of information. It is entirely descriptive and very complete. Other general works are Mulford's *The Nation: the Foundation of Civil Order and Political Life in the United States;* Laboulaye's *Histoire Politique des Etats-Unis*, 3 vols.; and Lamphere's *The United States Government: Its Organization and Practical Workings*, this last being chiefly valuable for its statistical and tabulated information.

Among foreign works that consider the theory and practice of the United States Government, are Bagehot's *English Constitution;* Sir Henry Maine's chapter on the *Constitution of the United States* in his *Popular Government;* E. A. Freeman's article *Presidential Government* contained in his *Historical Essays* (1871); Lord Brougham's chapter on the *Government of the United States* in his *Political Philosophy,* Vol. 3; and E. Boutmy's *Etudes de droit Constitutionel.* For current political information McPherson's *Hand-book of Politics,* issued every two years since 1870, is valuable. Besides statistical information regarding government revenues and expenditures, public debts, votes, population, names of congressmen, &c.; these hand-books contain Presidential and Gubernatorial messages, transcripts from the *Congressional Record* relating to leading matters discussed in Congress; and decisions of the Supreme Court that are of general importance. *The Statesman's Year-Book,* published annually by Macmillan & Co., is valuable for reference in matters concerning both foreign and American governments. Bibliographical references are also given to each existing government.

John Fiske's recent volume on *Civil Government in the United States,* stands in merit far above other manuals bearing this name, most of which are simply running commentaries on the constitution. An excellent feature of Mr. Fiske's book is the addition of bibliographical notes at the ends of the chapters.

The following are manuals that may be recommended as of comparative merit: Macy, *Our Government: How it Grew, What it Does, and How it Does it;* Cocker's *Civil Government;* Thorpe's *Government of the People of the United States;* Martin's *Civil Government,* and Ford's *American Citizens' Manual.*

The most complete collection of bibliographical references to the Constitution of the United States is that prepared by W. E. Foster, and published as *Economic Tract* No. XXIX, by the "Society for Political Education," New York.

Government.

Dr. J. C. Bluntschli's *Lehre vom Modernen Stat,* in three volumes, gives the finest treatment of the various forms and general principles of governments. A portion of Dr. Bluntschli's work has been translated into English and published under the title *The Theory of the State.* There is also a French translation of this work. Other authorities under this head are: Bluntschli's *Staatswörterbuch;* Woolsey's *Political Science, or the State Theoretically and Practically Considered;* and Montesquieu's *De l'Esprit des Lois.* Interesting from an historical point of view, are the theories contained in the works of political philosophers in the past. See Plato's *Republic;* Aristotle's *Politics;* Cicero's *De Republica;* Thomas Aquinas' *Of the Government of Principles;* Dante's *De Monarchia;* Machiavelli's *Prince;* Jean Bodin's *Of the Commonwealth;* Hobbes' *Leviathan;* Filmer's *Patriarcha;* Hooker's

Ecclesiastical Polity; Locke's *Civil Government;* J. J. Rousseau's *Social Contract;* Bentham's *Fragment on Government;* J. S. Mills' *Representative Government.*

Pollock's *History of the Science of Politics,* published in the "Humboldt Library," contains an admirable summary of the views of these political philosophers.

The works of several of these authors (Hobbes, Hooker, Locke, Filmer, Machiavelli) are contained in "Morley's Universal Library," published by Routledge at one shilling per volume.

For theories regarding the origin and development of government, see Maine's *Ancient Law, Early History of Institutions,* and *Early Law and Custom;* Spencer's *Principles of Sociology,* Vol. I; Morgan's *Ancient Society;* McLennan's *Studies in Ancient History,* and *The Patriarchal Theory;* and Bagehot's *Physics and Politics,* published in the Humbolt Library. The contract theory of government is presented in various forms in the works of Hobbes, Hooker, Locke and Rousseau.

Functions of Government.

The proper limits of state action are discussed in Mill's *Essay on Liberty;* Huxley's *Administrative Nihilism* (Humboldt Lib.); Spencer's *Social Statics, Man versus the State, The Coming Slavery,* and *The Sins of Legislators* (Humboldt Lib.); Stephen's *Liberty, Equality, Fraternity;* Humboldt's *Sphere and Duties of Government;* and H. C. Adams' *State in Relation to Industrial Action,* published by the American Economic Association. Wilson's *The State* contains a valuable chapter upon the functions of government. For a description of existing forms of government, Prof. Woodrow Wilson's *The State* is very valuable. See also *Statesmen's Year Books.*

Colonial Governments.

Volumes III, IV, and V of Winsor's *Narrative and Critical History of America,* 8 vols., contain excellent monographs upon the founding, history and nature of government of the various colonies. Doyle's two volumes, entitled *The English Colonies in America,* present an exhaustive study of the American colonies from an European point of view. A handy digest of this work is contained in his small *History of the United States,* published as one of the volumes in "Freeman's Historical Course for Schools." Lodge's *Short History of the English Colonies in America* is chiefly devoted to colonial social life. In the preparation of the chapter upon Colonial Governments, we have obtained the most assistance from the first volume of Story's *Commentaries upon the Constitution.* Pages 15 to 50 of Hannis Taylor's *Origin and Growth of the English Constitution* are important. Fiske's *Beginnings of New England* is an extremely interesting description of the early history of a single section.

Steps Toward Union and Independence.

See especially Story's *Commentaries;* Frothingham's *Rise of the Republic of the United States;* Scott's *Development of Constitutional Liberty in the English Colonies in America;* Fiske's *Critical Period of American History;* and A. B. Hart's *Formation of the Union,* 1763–1829, to appear in the series, "Epochs of American History." For the Albany plan of union see Franklin's *Life and Letters,* Vol. 4. For an account of the causes leading to revolution written from an essentially English standpoint, see Lecky's *History of England in the Eighteenth Century,* Vol. IV.

Articles of Confederation.

Best upon this subject are: Curtis' *History of the Constitution;* Marshall's *Life of Washington;* Bancroft's *History of the United States;* and Winsor's *Narrative and Critical History of America,* Vol. VII, article *The Confederation* by the Editor. See also *Secret Journals of Congress,* and authorities cited above.

Constitutional Convention and the Adoption of the Constitution.

See authorities cited above, and J. A. Jameson's *Treatise on Constitutional Conventions.* The official sources of information are: the meagre *Journal, Acts, and Proceedings of the Convention;* and Elliot's *Debates in the Several State Conventions on the Adoption of the Federal Constitvtion, * * * * together with the Journal of the Federal Convention,* the last volume of which contains Madison's notes of *Debates in the Federal Convention,* frequently called *The Madison Papers.*

The Constitution.

The number of valuable works concerned more or less directly with a study of the Constitution is very great. Only a very few can be mentioned. A very complete list of references to the Constitution, is that by W. E. Foster, already referred to. The leading works upon Constitutional Law are Cooley's *General Principles of Constitutional Law,* and *Constitutional Limitations;* Von Holst's, Hare's and Pomeroy's treatises on Constitutional Law. Story's *Commentaries on the Constitution* are invaluable. The character and value of *The Federalist* have been noticed in the text (p. 25). On Constitutional Amendments, see Johnston's article on *Amendments* in Lalor's *Encyclopædia.* Concerning Constitutional developments, due to judicial construction, see Willoughby's *Supreme Court of the United States: its History and Influence in our Constitutional System,* published in the Johns Hopkins Studies, Extra Vol. VII; and *The Constitutional History of the United States as Seen in the Development of American Law,* by Judge Cooley and others, edited by H. W. Rogers. *The Unwritten Constitution of the United States,* is the title of a very recent book by C. G. Tiedeman.

For constitutional development due to war experiences, see Dunning's *United States in Civil War and in Reconstruction.* W. E. Foster has in press a pamphlet of references on *The United States Constitution in Civil War.*

On Federal Government, see Jellinek's *Die Lehre von den Staatenverbindungen;* and Hart's *Introduction to the Study of Federal Government,* Harvard Historical Monographs, No. 2. Besides giving an outline of the political history of the successive federations in the world's history, with an account of the literature upon each, Mr. Hart's monograph contains a very excellent bibliographical note on Federal Government in general, and the United States Constitution in particular.

The laws of the United States are known as *United States Statutes at Large.* In 1878 was published a large volume containing all Federal laws in force in 1874. In 1881 was published a Supplement (known as *Richardson's Supplement*) containing congressional legislation during the years 1874–1881.

Congressional Government.

The official reports of the debates of Congress have been published under the following titles: *Annals of Congress* (1789–1823), *Congressional Debates* (1824–1837), *Congressional Globe* (1833–1873), *Congressional Record* (1873 to the present time). Benton's *Abridgment of Debates* in 16 volumes covers the period 1789 to 1850.

McPherson's *Handbook of Politics,* already cited, contains accounts of the more important debates in Congress. Printed copies of bills and reports of committees can be obtained upon application. For the best descriptions of the practical working of Congress, see Bryce's *American Commonwealth,* and Woodrow Wilson's *Congressional Government.* In both of these works our committee method of congressional legislation is compared with the English method of Parliamentary legislation under the leadership of a responsible ministry. The conclusions obtained from this comparison by the latter author, are especially unfavorable to the United States. Other references to works comparing English and American methods of legislation, are Snow's *Defence of Congressional Government,* published in the papers of the American Historical Association, Vol. IV; A. L. Lowell's *Essays on Government;* Bagehot's *English Constitution;* Bourinot's article, *Canada and the United States, Scottish Review,* July, 1890, and Annals of the American Academy of Social Science, No. I; and an article by Hon. Joseph Chamberlain, *Shall We Americanize Our Institutions?* Nineteenth Century, December, 1890. *The Congressional Directory,* published annually, contains much handy information regarding the constitution and officers of Congress, and of the various federal departments at Washington. For an account of the work done during the last session (1889–90), see *North American Review,* November, 1890. Regarding the recent controversy on the power of the Speaker of the House of Representatives to count as present members in the hall, but not answering to the roll-call, see the *North American Review* for

October, 1889; the Nos. for March, May, July, August and October, 1890, also contain interesting articles on the same subject.

Executive Departments.

Of especial and authoritative value is the report of a select committee of the Senate to *Enquire into and Examine the Methods of Business and Work in the Executive Departments,* in 3 vols., known as Cockrell's Report, or Senate Report 507, 50th Cong., 1st Sess., and also a supplementary report in one volume, dated March 28, 1889. For other official sources of information, see the annual reports of the various departments, and of the individual bureaus. See also special reports mentioned in the text. On diplomatic relations, see the annual report of the Secretary of State *On Foreign Relations,* and *Treaties and Conventions between the United States and Other Powers* (1776–1887), published by the same department. The *Consular Reports,* issued from time to time by the State Department, are of value as furnishing economic information regarding foreign countries. The reports of the Secretary of the Treasury are of extreme statistical and financial value. For handy use the *Statistical Abstract* is issued annually by the Treasury Department. The reports published by the Department of State, of the *International Conferences of 1878,* and of *1881,* and that of Edward Atkinson on *The Present Status of Bimetalism in Europe* (1887), are of especial value upon monetary topics. In 1886 the Treasury Department issued a volume of *Laws Relating to Loans, and the Currency, Coinage and Banking.* Besides his annual report the Director of the Mint publishes annually a report on the *Production of Gold and Silver in the United States.* For an account of the Sub-Treasury system, see Bolle's *Financial History of the United States.* Concerning the evils of this system, see an article by Prof. J. L. Laughlin in the *North American Review,* Vol. 137, p. 552.

Regarding the Silver Question and other important public questions coming within the province of the Treasury Department, information can be derived from recent periodicals. Poole's *Index to Periodical Literature* should also be consulted. An interesting account of the Pension Office is contained in the *Atlantic Monthly,* January, 1890. Regarding the Interstate Commerce Commission, see the book by Don Passos in Putnam's "Questions of the Day" series. See also Political Science Quarterly, Vol. II, pp. 223 and 369.

The Eleventh Census is now being compiled, and Bulletins are issued from time to time by the superintendent. Postmaster-General Wanamaker has recently issued a pamphlet in support of a *Limited Post and Telegraph.*

Concerning the constitutional powers possessed by executive officers, see A. Conkling's *Powers of the Executive Departments;* de Chambrun's *The Executive Power,* and chapter VII of Willoughby's *Supreme Court of the United States.* The *Official Register of the United States,* issued annually in two large volumes, contains the names and positions of all persons in federal employment. The second volume is devoted exclusively to the Postal Service.

Very many of the government reports mentioned in this note will be sent to any address upon application.

A descriptive catalogue of all government publications arranged in chronological order, from 1774 to 1881, was prepared by B. P. Poore and published by the government.

Federal Judiciary.

Among the treatises upon the practical working of the Federal Judiciary are: B. R. Curtis' *Federal Courts;* Bryce's *American Commonwealth;* and Willoughby's *Supreme Court of the United States*, already referred to. For an excellent description of the relations between the Federal and State courts, see Chamberlain's lecture published in *The Constitutional History of the United States as seen in the Development of its Law.* The reports of decisions of cases tried in the Supreme Court are contained in one hundred and thirty-three volumes. Until 1875, these volumes were known by the names of the reporters, viz.: Dallas, Cranch, Wheaton, Peters, Howard, Black, and Wallace. Since 1875 they have been designated simply as *United States Reports.*

Ordinance of 1787.

For text and comments see *Old South Leaflet* No. 13 (Heath & Co., price five cents). For *The United States Constitution and the Ordinance of* 1787 *in Relation to Education*, see Magazine of American History, September, 1888. See also Papers of the American Historical Association, Vol. III; pamphlets by Dr. Poole and F. D. Stone, and Sato's *History of the Land Question in the United States*, Johns Hopkins University Studies, Series IV.

Territories.

The reports of the Governors of the various territories to the Secretary of the Interior furnish an official source of information. Regarding the government of, and conditions of admission of territories as States, see especially Bannatyne's *Republican Institutions in the United States.*

State Governments.

For the text of State constitutions see B. P. Poore's *Federal and State Constitutions, Colonial Charters, and Other Organic Laws of the United States*, in two vols. (1877), published by the government. For further information regarding State constitutions consult Davis' *American Constitutions*, in the Johns Hopkins University Studies, Series III; Jameson's *Introduction to the Constitutional and Political History of the States*, Johns Hopkins University Studies, Series IV; and Hitchcock's *American State Constitutions* (Putnam's "Questions of the Day" series). See also of course Bryce's *American Commonwealth.* For *Recent Tendencies in State Activities*, see paper

by W. F. Willoughby, to be published in the "Papers of the American Historical Association," Vol. V., and articles by Dr. Albert Shaw, entitled *American State Legislatures,* in Contemporary Review, October, 1889, and *The American State and the American Man,* in the same review for May, 1887. The *Forum* for November, 1890, contains an interesting description of the *Six New States,* by Senator Cullom. For histories of the individual States, see the series of "American Commonwealths," edited by H. E. Scudder, and published by Houghton, Mifflin & Co. Those for Connecticut, Indiana, Michigan, Missouri, Kansas, California, Maryland, Kentucky, New York, Ohio, Colorado, Oregon, and Virginia, have already appeared.

Local Government.

Among authorities on Local Government are various monographs upon this subject in the several States, contributed to the *Johns Hopkins University Studies in Historical and Political Science.* See also Bryce and Bannatyne.

City Government.

See J. H. U. *Studies,* Vol. IV, Nos. 4, 10; Vol. V, Nos. 1, 2, 3, 4; Vol. VII, Nos. 1, 3, 4. Also supplementary volume, *Philadelphia, 1681–1887: a History of Municipal Development,* by Allinson and Penrose. Simon Sterne has an able article on "Cities" in Lalor's *Encyclopædia.* See also chapters in Bryce's great work, and articles in the Political Science Quarterly for June, 1887, and June, 1889; Forum, Vol. II, pp. 260, 539; and Quarterly Journal of Economics, January, 1890.

The report of the New York Commission on *"A Plan for a New Government of New York,"* 1876, is valuable, as are also several of ex-Mayor Hewitt's messages. Prof. Gniest has a suggestive article on Berlin, the best governed city in the world, in the *Contemporary Review,* Vol. 46. Shaw's article on Glasgow in the Century, March, 1890, is likewise instructive. Spofford's *City of Washington and Growth of United States Cities* is interesting. Ely's *Taxation in American States and Cities* contains many excellent suggestions for improvements in our methods of municipal administration. See also Ely's *Problems of To-day.* Putnam is publishing a series entitled *Great Cities of the Republic.* The Stories of New York, Boston and Washington have thus far appeared.

Government Revenue and Expenditure.

Federal and State finance reports furnish official information. Seligman's *Finances of American States and Cities,* published by the American Statistical Association, 1890, is valuable, and furnishes excellent statistical and tabulated information. Ely's *Taxation in American States and Cities* contains much information. Spofford's article on *The Budget* in Lalor's *Encyclopædia* is extremely instructive. H. C. Adams' *Public Debts* is one of the ablest

financial works in the English language. The proper administration of Federal and State finances is discussed, and the subject of national and local debts considered. Bolle's *Financial History of the United States*, in three large volumes, is an able work, and can be consulted with profit.

Census Bulletins, Nos. 6 and 7, describe respectively *The Indebtedness of States in 1880 and 1890*, and *The Financial Condition of Counties.*

Money.

See reports of the Director of the Mint, and of the Comptroller of the Currency. See also Knox's *United States Notes;* Sumner's *History of American Currency*, and text-books on *Political Economy.*

Public Lands of the United States.

Sato's *History of the Land Question in the United States*, Johns Hopkins University Studies, Series IV, is the best book for reference. The official source of information regarding the public lands is Donaldson's enormous report of 1341 pages on *The Public Domain: its History with Statistics* (1884), published by the government (House Executive Documents 47, Part 4, 46th Congress, 3d Session.) For a short account of *The Disposition of Our Public Lands*, see an article by A. B. Hart, in the Quarterly Journal of Economics, January, 1887. Statistical tables are appended to this article.

Reconstruction.

See Johnston's article in Lalor's *Encyclopædia*, and authorities there cited. Also McPherson's *History of Reconstruction*, Dunning's *United States Constitution in Civil War and in Reconstruction*, and W. E. Foster's *References on the United States Constitution in Civil War*, about to be published (1891).

Party Machinery and National Conventions.

See especially Bryce's *American Commonwealth*, and Ostrogorski's *Organisation des parties politiques aux Etats-Unis.* On the Caucus see Whitridge's *The Caucus System*, published as "Economic Tract" No. 8, by the Society for Political Education, New York.

Political Parties.

Winsor's *Narrative and Critical History of America* contains a short history of political parties by Professor Alexander Johnston. See also Johnston's admirable manual, *History of American Politics*, a book especially adapted for school use. Von Holst's *Constitutional and Political History of the United States*, six volumes, contains the most comprehensive treatment of the history

of political parties. Schouler's *History of the United States under the Constitution*, is an exceedingly able and interesting work. Four volumes bring this history down to 1847. The fifth volume soon to appear, will bring the narrative down to the Civil War.

The first volume of Von Holst is especially interesting, as giving statements of the various theories held regarding the origin and nature of our constitution. Upon Nullification and Secession, see Von Holst's *Life of Calhoun;* Stephens' *War between the States;* Greeley's *American Conflict;* McPherson's *Political History of the Rebellion;* and articles in Lalor's *Encyclopædia.* The *American Statesman Series*, now being published by Houghton, Mifflin & Co., contains valuable biographies of leading American statesmen. See especially in this series Schurz's *Henry Clay;* Morse's *Jefferson;* Lodge's *Webster;* and Von Holst's *Calhoun.* Upon the Economic contrasts between the North and South, see Von Holst's Constitutional History, Vol. I, Chapters IX and X. Taussig's *History of the Tariff*, gives the best history of this much debated subject.

III-IV

The History of University Education in Maryland

The Johns Hopkins University (1876-1891)

JOHNS HOPKINS UNIVERSITY STUDIES
IN
HISTORICAL AND POLITICAL SCIENCE

HERBERT B. ADAMS, Editor

History is past Politics and Politics present History—*Freeman*

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III-IV

The History of University Education in Maryland

By BERNARD C. STEINER, A. M. (Yale)
Fellow in History

The Johns Hopkins University (1876-1891)

By DANIEL C. GILMAN, LL. D.
President of the University

With Supplementary Notes on University Extension and the University of the Future, by R. G. Moulton, A. M., Cambridge, England

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CONTENTS.

PAGE.

THE HISTORY OF UNIVERSITY EDUCATION IN MARYLAND:

Colonial Attempts to found a College 7
The First University of Maryland 9
The Second University of Maryland 15
Cokesbury College 22
Asbury College 29
Other Extinct Colleges 30
Mount Hope College 30
The College of St. James 31
Newton University 31
Roman Catholic Colleges 32
St. Mary's Seminary 32
Mount St. Mary's College 33
St. Charles's College 34
Loyola College 34
Rock Hill College 35
Western Maryland College 35
Female Education 36
The Baltimore Female College 36
Woman's College of Baltimore 36
Conclusion 37

THE JOHNS HOPKINS UNIVERSITY (1876–1891):

Foundation 39
Preliminary Organization 42
Inaugural Assembly 43
Address of President Eliot 44
Inaugural Address of the First President 49
The Faculty 58
Distinction between Collegiate and University Courses 64
Students, Courses of Studies, and Degrees 66
Publications, Seminaries, Societies 69
Buildings, Libraries, and Collections 71
Statistics 72
Trustees 73

UNIVERSITY EXTENSION AND THE UNIVERSITY OF THE FUTURE 75

THE HISTORY OF UNIVERSITY EDUCATION IN MARYLAND.

By BERNARD C. STEINER.

Colonial Attempts to found a College.

The State of Maryland has been almost extravagantly liberal in bestowing charters on colleges and professional schools. Over forty such charters have been given by the legislature and, in many cases, the result has proved that the gift of a charter was not warranted by the stability of the institution, to which was thus granted the power of conferring degrees. In many other cases, however, the institutions have grown and flourished, and have had an honorable history.

Collegiate education in Maryland did not begin until after the Revolution. In the colonial period there was no demand for it sufficient to warrant the establishment of a seat of higher learning. For this state of things there were several causes. The majority of the early settlers were planters and frontiersmen, having little need for an extended education and desiring it still less. Of the wealthier classes, some were like the fox-hunting English gentry, caring for little else than sport; and others, who did desire the advantages of a culture higher than that obtainable from a village schoolmaster or a private tutor, found it elsewhere. They went over to William and Mary's College in Virginia, across the ocean to England, or, in case of some Catholics like Charles Carroll, to the institutions on the continent of Europe.

But, though no college was established in colonial times, there was no lack of plans and attempts for one. In 1671, while as yet Harvard was the only American college, there was read and passed in the Upper House of the Assembly "An Act for the founding and Erecting of a School or College within this Province for the Education of Youth in Learning and Virtue." The Lower House amended and passed the bill; but the plan seems never to have progressed further. According to the bill the Lord Proprietor was "to Set out his Declaration of what Privileges and Immunities shall be Enjoyed by the Schollars;" and "the Tutors or School Masters" were to be of "the reformed Church of England" or, if two in number, to be "the one for the Catholick and other for the Protestants' Children."[1]

A second collegiate plan was brought before the legislature in 1732; but, having passed the Upper House, was seemingly not acted on by the Lower. This proposed college was intended to be placed at Annapolis and was to offer instruction in "theology, law, medicine, and the higher branches of a collegiate education." The governor of the colony was to be its chancellor and provision was made for a faculty of five, under whom students were to be instructed in everything from their alphabet upwards.[2]

A third unsuccessful attempt to secure the founding of a college was made in 1761,[3] and a fourth in 1763, when contrary to the earlier course of events, the rock, on which the project was shipwrecked, was found in the Upper House. The college was to be placed at Annapolis, to occupy Governor Bladen's mansion, and to have a faculty of seven masters, who were to be provided with five servants. The expense was to be defrayed from the colonial treasury, in case

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[1] *Md. Archives;* Assembly Proceedings, 1666–1676, pp. 262–264.

[2] Scharf, *Hist. of Md.*, II, p. 510.

[3] Sharpe, *Correspondence*, Vol. II, pp. 523–5 and 545.

a tax to be levied on bachelors should prove insufficient for the purpose.[1]

The failure of these projects did not dampen the zeal of the advocates of higher education. In 1773 we find William Eddis, Surveyor of Customs at Annapolis, writing that the Legislature of the Province had determined to fit up Governor Bladen's mansion and "to endow and form a college for the education of youth in every liberal and useful branch of science," which college, "conducted under excellent regulations, will shortly preclude the necessity of crossing the Atlantic for the completion of a classical and polite education."[2] The gathering storm of war, however, drew men's attention away from this project.

The First University of Maryland.

The Rev. Dr. William Smith,[3] head of what is now the University of Pennsylvania, being out of employment on account of the revocation of that college's charter, was called as pastor in Chestertown on the Eastern Shore in 1780. To add to his income, he conceived the idea "of opening a school for instruction in higher branches of education." As a nucleus for his school, he took an old academy, the Kent County school, and, beginning the work of teaching, was so successful, that in 1782 the Legislature, on his application, granted the school a charter as Maryland's first college. To it the name of *Washington* was given, "in honorable and perpetual memory of His Excellency, General George Washington." Dr. Smith was so earnest and zealous in the presentation of the claims of the college, that in five years he had raised $14,000 from the people of the Eastern Shore. All seemed propitious for the college. In 1783 the first class graduated and the first degrees ever granted in Maryland were conferred, at the same time

[1] Scharf, *Hist. of Md.*, II, p. 511.

[2] Eddis, *Letters from Maryland*, 1769–1776.

[3] MS. sketch of Prof. Rowland Watts.

the corner-stone of the college building was laid, and in 1784 General Washington himself visited the college.

Dr. Smith prepared a three years' curriculum for the institution, equal to that of any college of the day and similar to the one used at the University of Pennsylvania. But the Western Shore could not endure that the educational success of its rival section of the State should so far outstrip its own. In the early days of the State, the sections were nearly equal in importance and the prevailing dualism of the political system invaded the field of education.

In 1784, two years after the founding of Washington College, *St. John's College* was chartered.[1] It was to be placed at Annapolis, and in it was merged the old county Academy, "King William's School," founded some eighty years before. By the same act, the two colleges were united in the *University of Maryland.* This University was modeled on the English type: the governor was to be its chancellor, and the governing body was to be the "Convocation of the University of Maryland." The convocation was to be composed of seven members of the Board of Visitors and Governors and two of the faculty of each college; it was to establish ordinances for the government of the colleges, to cause a uniformity in the "manners and literature," to receive appeals from the students, and to confer "the higher degrees and honors of the University." Its meetings were to be annual, and to be held alternately at each college on its commencement day.

The provisions of the act were never carried out; two fruitless attempts were made to hold sessions of Convocation in 1790 and 1791, and then nothing was even attempted. So thoroughly was the project forgotten, that the Legislature of 1805, in withdrawing the State appropriations from the two colleges, did not even mention the University, and in 1812, though the old charter had never been repealed, there was

[1] Act of 1784, ch. 37.

no hesitation in bestowing the name of University of Maryland on a second institution.[1]

The two colleges which constituted this first University are still existing and doing good work. The elder, Washington College, lost Dr. Smith in 1788 by his return to Philadelphia and re-accession to his old position there. He was succeeded by Rev. Colin Ferguson, a native of Kent county, and educated at Edinburgh University. Under him the college continued to flourish, until the withdrawal of the State's appropriation in 1805. The constitutionality of this withdrawal is questionable, as the original grant was to be paid annually "forever;" but the State refused to permit itself to be sued by the college and, some years later, on increasing its appropriation to the college, the legislature required a release of all claims on the State under the original act.

By the act of 1805, the activity of the college was paralyzed and its usefulness much impaired. It had not yet become strong enough to stand alone and, when the helping hand of the State was taken away, it was almost obliged to close its doors to students. Since that time the State has renewed its grants to the college and has greatly aided it in performing its functions; but from the disastrous effects of the act of 1805, the institution has never fully recovered.

Indeed, from 1805 to 1816, nothing but a grammar school seems to have been maintained in the college building. In the latter year, however, the college was re-opened, since the legislature had granted it a lottery of $30,000. A year later Rev. Dr. Francis Waters became "Principal," and under his able leadership the college bid fair to regain its old position; but in 1827 a second great misfortune overtook it. On January 11, 1827, the college building was discovered to be on fire, and, in spite of the most zealous efforts, was entirely consumed. After this misfortune the college proper seems to

[1] Act of 1805, ch. 85. The appropriation had already been diminished by Act of 1798, ch. 107.

have been suspended a second time, and only a grammar school maintained with one instructor. The classes were conducted in a building intended originally for a rectory, until that was destroyed by fire in 1839, when the school was again moved.

Richard W. Ringgold, the principal of the school from 1832 to 1854, seems to have been a man of ability, and under him the number of students so much increased that in 1843 it was resolved to rebuild the college on the old site and to revive the college course. As a result, the present main building was erected, the corner-stone laid with imposing ceremonies on May 4, 1844, and the college was reopened in its own edifice on January 1, 1845. In 1849, a class of four was graduated, and in 1854, two additional buildings were erected; one for the Principal's residence and the other for dormitories and recitation rooms.

The college continued prosperous during the second administration of Rev. Dr. Waters from 1854 to 1860; but in the presidency of his successor, Rev. Andrew J. Sutton, came the Civil War, depriving the college of its Southern constituency and distracting men's minds from learning. After the Rebellion, an unfortunate selection of teachers and laxness of discipline caused the college to lose still more ground, and Wm. J. Rivers, Principal from 1873 to 1887, had much to do to build it up again. He was a faithful and diligent teacher, and under him the moral tone of the college was improved and the course of instruction enlarged. The present head, C. W. Reid, Ph. D., is still further advancing the cause of the institution and a new career of prosperity seems opening before Maryland's oldest college and the only one on the Eastern Shore of the Chesapeake Bay.

St. John's College, like its sister institution, founded on a non-denominational basis, started out under even fairer auspices.[1] It was granted, by the State, Governor Bladen's

[1] *Centennial of St. John's.* Address of P. R. Voorhees, Esq.

mansion and four acres of land surrounding it, was made heir to the funds of King William's School, and secured £9,000 from private beneficence in the first two years of its history. The Bladen mansion, now known as McDowell Hall, was repaired and enlarged and, on August 11, 1789, Bishop Carroll was elected president of the Board of Visitors and Governors and Dr. John McDowell accepted the Professorship of Mathematics. After unsuccessful attempts to obtain a principal from England, Dr. McDowell was chosen to that position in the following year and continued in office, until the State withdrew its aid to the college in 1805. He was a man of great learning and was very successful at St. John's and later at the University of Pennsylvania as provost. Under him, St. John's flourished greatly and many men of a national reputation were enrolled among its students, from the time the first class graduated in 1793.

The same disaster fell on St. John's, as on Washington College. The Legislature withdrew the annual grant given by the State. The same doubt as to the constitutionality of this withdrawal existed here, and the State confirmed its position in the same way, by increasing its appropriation in 1832,[1] on condition of the college's accepting it in full satisfaction of all claims against the State under the original charter. Of late years Maryland has been quite generous to St. John's, but it has never quite recovered the station and prestige it lost by the taking away of the State's grant in 1805.

In the first despair over the Act of the Legislature, the Visitors and Governors voted to discontinue the college, but their courage soon returned and the Rev. Bethel Judd, elected principal in 1807, was able to graduate a class in 1810. After his withdrawal in 1812, matters were in a disturbed state for some years and no classes were graduated until 1822, when Rev. Henry L. Davis, the father of Maryland's famous orator, Henry Winter Davis, was principal. After that year there

[1] Resolutions of 1832, No. 41.

were no graduates until 1827, when Rev. William Rafferty was head of the college. The struggle for existence was a hard one and the wonder is that the college succeeded as well as it did.

With 1831, however, began a third and more successful period in the history of St. John's. In that year the Rev. Hector Humphreys, then only thirty-four years of age, was chosen president. He was a native of Connecticut and a graduate of Yale College in 1818, and was called to St. John's from the professorship of Ancient Languages at Washington (Trinity) College in his native State. The effect of his energy and devotion was soon recognized, and, largely through his efforts, was passed the compromise of 1832. The curriculum was enlarged, the instruction made more thorough, and classes were yearly graduated, with but six exceptions, until his death in 1857. His energy was very great, his learning wide and accurate. In 1834, after travelling about the State in the interests of the college, he succeeded in raising about $11,000, which were used in the erection of a second building for the college, which most appropriately has since been called by his name. During his administration, the professors' houses were also built, as was Pinkney Hall, a third building for the use of the college. Dr. Humphreys also secured cabinets and philosophical apparatus for the college and gave instruction in Political Economy, Latin and Greek, Chemistry, Geology, Natural Philosophy, Astronomy, Composition, Elocution, Evidences of Christianity, Moral and Intellectual Philosophy, Rhetoric, and Logic. Verily, an encyclopædic man of vast industry! Only four years after Dr. Humphreys' death the War of the Rebellion broke out, and St. John's, unlike the temple of Janus, closed its doors at the rumors of war. The buildings were used as an hospital, and not until 1866 was the college again reopened with the well-known educator, Henry Barnard, at its head. In less than a year he resigned to become the first United States Commissioner of Education, and neither he nor his successor, Dr. James C. Welling, who

was principal until 1870, was able to graduate a class. Since the beginning of the administration of the next principal, James M. Garnett, LL. D., the succession of classes has been unbroken and the college has steadily advanced in reputation and usefulness. Dr. Garnett made the English department especially excellent and, after ten years faithful service, resigned in 1880. The Rev. J. D. Leavitt, his successor, made a departure from the old classic curriculum and organized a department of Mechanical Engineering. After he resigned Prof. W. H. Hopkins acted as principal for a time and introduced military discipline, having secured the detail of an officer from the United States Army as instructor in Military Tactics.

St. John's celebrated its centennial in 1889, and has begun its second century with excellent prospects. The four years' administration of its present principal, Thomas Fell, LL. D., has been a most successful one, and St. John's is fulfilling the purpose of its founders "to train up and perpetuate a succession of able and honest men, for discharging the various offices and duties of life, both civil and religious, with usefulness and reputation."

The Second University of Maryland.

Most universities have developed from a college; the University of Maryland differs from them, for it originated in a medical school.[1]

In 1802 Dr. John B. Davidge of Baltimore began a private class in Medicine and was so successful in it, that, in 1807, he associated with himself Drs. James Cocke and John Shaw and these three obtained from the Legislature a charter for the school, under the name of "the College of Medicine of Maryland."[2] There was made a close connection between the College of Medicine and the State "Medical and Chirurgical

[1] MS. Sketch of Dr. E. F. Cordell.
[2] Act of 1807, ch. 53.

Faculty," and its board of medical examiners were made *ex-officio* members of the Board of Trustees of the College. The Legislature also granted the college a lottery of $40,000.[1]

Lectures, which had been carried on at the professors' houses, were begun in 1808, at a building on the corner of Fayette (Chatham) street and McClellan's alley, and the first class, consisting of five, received its degrees in 1810. As the school grew and flourished, the ideas of its founders become more extensive and, in 1812, a long act was passed,[2] authorizing "the college for the promotion of medical knowledge" "to constitute, appoint, and annex to itself the other three colleges or faculties, viz.: The Faculty of Divinity, the Faculty of Law, and the Faculty of the Arts and Sciences; and that the four faculties or colleges thus united, shall be and they are hereby constituted an university, by the name and under the title of the University of Maryland." The connection with the Medical and Chirurgical Faculty was severed and the members of the four faculties, under the name of the Regents of the University of Maryland, were to have full powers over the University and be permitted to hold property not exceeding $100,000 in yearly value.

Each faculty was allowed to appoint its own professors and lecturers, to choose a dean, and to exercise such powers as the regents shall delegate. The Faculty of Physic was to be composed of the professors in the Medical College; that of Theology, of the professor of Theology and any "six ordained ministers of any religious society or denomination;" that of Law, of the professor of Law, "together with six qualified members of the bar;" that of the Arts and Sciences, of the professors in that department, "together with three of the principals of any three academies or Colleges of the State." Such a strangely formed and loosely united body could not succeed, as a more homogeneous and closely compacted one would have done.

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[1] Act of 1807, ch. 111.

[2] Act of 1812, ch. 159.

The university was founded "on the most liberal plan, for the benefit of students of every country and every religious denomination, who shall be freely admitted to equal privileges and advantages of education, and to all the honors of the university, according to their merit, without requiring or enforcing any religious or civil test, urging their attendance upon any particular plan of religious worship or service." With these broad powers and provisions,[1] "the Faculty of Phisick, late of the College of Medicine of Maryland, * * * convened and, by the authority vested in it by said charter and with the advice and recommendations of learned men of the several professions of Divinity, Law, and the Arts and Sciences, proceeded to annex to itself the other three faculties." On April 22, 1813, the Hon. Robert Smith, formerly United States Secretary of State, was chosen the first provost, and the organization of the regents was completed.[2] A lottery of $30,000 was granted the University in 1814, and another of $100,000 in 1817.[3] From the proceeds of these lotteries and other sources was built the building of the medical department on the corner of Lombard and Greene streets. It was modelled on the Pantheon at Rome, and, when built, is said to have been without an equal in America. The medical school grew extremely fast; a loan of $30,000 from the State in 1822[4] enabled it to build a practice hall and purchase a fine collection for its museum, and the University hospital across the street was opened in 1823. In 1824 the number of students in attendance on lectures amounted to 320. The other faculties took no active steps for some time and, not until 1819, did the regents urge them to proceed to deliver lectures as soon as possible and to lay before the regents annually a report as to their progress and condition. In 1823, possibly on account

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[1] *Records of Univ. of Md.*, Vol. A.

[2] In 1815 he was succeeded by the Rt. Rev. James Kemp, D. D.

[3] Acts of 1813, ch. 125; 1814, ch. 78.

[4] Act of 1821, ch. 88.

of this vote, Prof. David Hoffman began the instruction in the Faculty of Law, his school being known as the "Maryland Law Institute." He published part of his lecture notes in a book called *Legal Outlines* and continued lecturing about ten years. After his withdrawal, the law school was given up; but the organization of the faculty was still maintained.

The Faculty of Theology reported in 1852 "no active organization of the faculty has ever been attempted and, in view of the character of the department contemplated by the charter, none seems desirable." Its only activity was a course or two of lectures on the Evidences of Christianity, delivered before the medical students about 1823 by the Rev. William E. Wyatt, Professor of Theology. A nominal organization of the faculty was kept up, however, until 1878.

The prosperity of the medical department was destroyed by the effort of some of its professors, discontented with being prohibited from having private classes, to have the Legislature do away with the regents and replace them with a board of trustees, in whom should vest the property. As early as November 12, 1824, the Regents feared trouble and obtained from William Wirt, John Purviance and Daniel Webster, a legal opinion that their position was inexpugnable. With this conclusion the Legislature did not agree, and on March 6, 1862, an act was passed abolishing the Regents and appointing a Board of twenty-one Trustees in their place.[1]

The Trustees, by decree of the courts, obtained control of the property and forced the professors to accept them as the legal authority. So matters went on for twelve years, until in 1837, the trustees appointed a professor personally objectionable to some of the others, who resigned their positions under the Trustees and opened a separate medical school in the Indian Queen Hotel at the corner of Baltimore and Hanover Streets. Few out-of-town students attended either school, for the quarrel frightened them away, and the Baltimore students

[1] Act of 1825, ch. 190.

largely attended the Regents' school. Feeling ran high at one time, the Regents took possession of the University buildings by force, and bloodshed was feared.

The Board of Regents reorganized with Ashton Alexander, M. D., as Provost, and employed distinguished counsel to plead the case for them in the courts. The Legislature authorized the Court of Appeals to try the suit, and Maryland's Dartmouth College Case was decided in June, 1838, entirely in favor of the Regents. The court held that the act of 1825 was void, since it was "a judicial act, a sentence that condemned without a hearing. The Legislature has no right, without the assent of a Corporation, to alter its charter, or take from it any of its franchises or property." The Trustees would not yield at once and, in March, 1839, presented a petition to the Legislature, praying it not to pass an act requiring them to give up the property to the Regents. The memorial was referred to a joint committee, which reported a bill restoring the property to the Regents. The bill was enacted and the Regents have since ruled. During the supremacy of the Trustees, the Faculty of the Arts and Sciences was organized. They contemplated activity in 1821, and issued a circular, which drew down on them the wrath of Professor Hoffman, inasmuch as they "contemplated 'academic' instruction" not intended by the charter. The founders, he said, intended that instruction should be conveyed by lectures and that no other form of instruction should be allowed. The discussion which followed seems to show that he had the idea of having work carried on, like that done by graduate students to-day.

But nothing was done, apparently, until Baltimore College was annexed in 1830. That institution was chartered on January 7, 1804,[1] and was the development of an academy kept by James Priestley, the first president, on Paul's Lane (St. Paul Street). "It was hoped that it would, together with the other valuable seminaries of education in the same

[1] Act of 1803, ch. 74.

city and in the State, become adequate to the wants and wishes of our citizens," and from the proceeds of a lottery, the grant of which was an easy way for a State to be benevolent, a plain but convenient building was erected on Mulberry street.[1]

It is very doubtful if it ever graduated any students, and we learn in 1830 that "the celebrity and, in some cases, the superior existing advantages of other institutions have prevented the accomplishment of this object." Still a school had been kept up continuously, and from time to time, we catch glimpses of its lectures, &c. In January, 1830, a joint petition of the Trustees of the University of Maryland and of Baltimore College to the Legislature "proposed the charter of Baltimore College shall be surrendered to the State, on the condition that the property belonging to the college shall be invested in the trustees of the University of Maryland." The petition was granted,[2] and in 1832, we learn that "the Baltimore College * * * has now been merged in the University of Maryland and constitutes the chair of Ancient Languages."[3]

On October 1, 1830, the Trustees issued a prospectus, from which we learn that it was intended "to maintain an institution on the most enlarged scale of usefulness and responsibility," and that there was a "necessity for the proposed organization of a department in the University of Maryland, exclusively collegiate in its system, requiring an advanced state of classical and scientific attainments for admission to its lectures, calculated to conduct its pupils through the highest branches of a liberal education and to afford them advantages similar to what may be obtained in the distant Universities of this country and Europe." A course of study equal to that of any college of the country was announced, and a brilliant Faculty appointed; but the time was not yet come

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[1] Scharf, *Chron. of Baltimore*, p. 294.

[2] Act of 1830, ch. 50.

[3] Lucas, *Picture of Baltimore*, p. 170.

for a great college in Baltimore and the institution languished away. In 1843, the Commissioners of Public Schools petitioned to have it transferred to the city as a High School, and in 1852, it had only one teacher and 36 scholars, a mere boys' school.

In 1854 it was reorganized as the "School of Letters under the Faculty of Arts and Sciences," with Rev. E. A. Dalrymple, formerly of the Episcopal Theological Seminary at Alexandria, as its head. On paper the course was fairly complete, and the Faculty an able one, and there were graduates in 1859, '60, '61, and '63. The course was to be a three years' one; for "the studies of Freshman year will be pursued in the preparatory department, where experience has shown they may be attended with greater advantage." Gradually students fell off, it became a mere boys' school, and finally Dr. Dalrymple was all that was left of the "School of Letters" and the "Faculty of the Arts and Sciences," and at his death, both formally became extinct.

With the restoration of the property to the Regents, the classes in the medical school increased to a size somewhat like that attained in years previous to 1825, although, owing to the opening of new schools, they never quite equalled it. During the war of the Rebellion, the school suffered from the loss of southern patronage; but at its close, students came back and the school took on fresh life. It has always been in the front rank; first of all American medical schools it recognized Gynecology as a separate branch of instruction, and it was second in making practical Anatomy a compulsory study. With the session of 1891 it will require a three years' graded course of all candidates for degrees.

In 1850 the Hon. John P. Kennedy, statesman and author, was chosen provost, and on his death in 1870, the Hon. S. Teackle Wallis was made his successor and he now fills the office with honor.

The Faculty of Law revived the Law School in the beginning of 1870, with a class of 25. An efficient faculty has

caused a steady increase, until, in 1890, there were 101 students in the three years' course. The instruction is given by lectures, examinations, and moot-courts. In 1884, the Law Department moved from its former quarters in the old Baltimore College building on Mulberry Street, to a new building erected for it on the University property on Lombard Street, next to the building of the Medical Department.

In 1882, the University of Maryland obtained from the Legislature authority to open a Dental Department.[1] In 1837, the first Dental Lectures in America had been delivered before the Medical Students of the University, and it was quite fitting that there should be a dental school connected with it. The first class numbered 60, the last 132, and in eight years there have been 250 graduates. This fact and the further one that twice has it been found necessary to make large additions to the buildings of the department on Green Street, adjoining those of the Medical School, will show how rapid has been its growth.

The University has, at present, flourishing departments of Medicine, Law, and Dentistry, and worthily maintains the reputation of thorough and careful training, which it has gained in its history of eighty years.

Cokesbury College.

In Maryland was the first Methodist Church in America, and it was natural that here too should be the first Methodist College in the world. There was no permanent organization of this denomination in the United States, until John Wesley, on the petition of the American churches, consecrated Rev. Thomas Coke, Superintendent for the United States, in 1784. Dr. Coke sailed directly from England, and arrived in New York on November 3, 1784. He thence traveled southward and, on the 15th of the same month, met Francis Asbury at

[1] Act of 1882, ch. 88.

Dover, Delaware. At this first meeting, Coke suggested the founding of an institution for higher education, to be under the patronage of the Methodist Church.[1] This was not a new idea to Asbury; for, four years previous to this meeting, John Dickins had made the same suggestion to him. The earlier idea had contemplated only a school, on the plan of Wesley's at Knightwood, England, and for that purpose, a subscription had been opened in North Carolina in 1781.[2]

Coke's suggestion, to have a college, was favorably received and, at the famous Christmas Conference at Baltimore in 1784, the Church was formally organized, with Coke and Asbury as Bishops, and the first Methodist College was founded. Thus the denomination which has increased to be the largest in the United States, recognized the paramount importance of education at its very foundation.[3] To the new institution, the name of Cokesbury was given, in honor of the two Bishops, from whose names the title was compounded. For this College, collections were yearly taken, amounting in 1786 to £800 and implying great self-denial by the struggling churches ill-supplied with wealth.[4]

As early as January 3, 1785, only two weeks after the College was decided on, its managers were able to report that £1,057 had been subscribed, a sum that put the enterprise on a firm footing. The site was next to be chosen, and Abingdon in Harford County was pitched upon. Of the 15,000 Methodists in the Union in 1784, over one-third were in Maryland, and hence, it had the best claim for the College, and the beauty of the situation of Abingdon charmed Coke so much that he determined upon placing the College there. It was also a place easy of access, being on the direct stage line from Baltimore to Philadelphia and near the Chesapeake Bay. Bishop Coke, the most zealous advocate of the College, contracted for the

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[1] Stevens' *History of Methodism*, II, 253.
[2] Some account of Cokesbury. MSS. of Rev. Wm. Hamilton.
[3] *Early Schools of Methodism*, p. 21.
[4] MSS. of Rev. I. P. Cook.

building materials; but was prevented from being present at the laying of the corner-stone. Bishop Asbury, however, was present and preached a sermon on Psalms 78, verses 4 to 8.[1] In this sermon, "he dwelt on the importance of a thoroughly religious education, and looked forward to the effects, which would result to the generality, to come from the streams which should spring from this opening fountain of sanctified learning." The building was built of brick, one hundred feet in length and forty in width, faced east and west, and stood on "the summit and centre of six acres of land, with an equal proportion of ground on each side." It was said to be in architecture "fully equal, if not superior, to anything of the kind in the country." Dormitory accommodations were provided in the building; but it was intended that "as many of the students as possible, shall be lodged and boarded in the town of Abingdon among our pious friends."[2] Gardening, working in wood in a building called the "Taberna Lignaria," bathing under supervision of a master, walking, and riding were the only outdoor exercises permitted. The students were prohibited "from indulging in anything which the world calls play. Let this rule be observed with the strictest nicety; for those who play when they are young, will play when they are old."

In 1785 the Bishops issued a "Plan for Erecting a College intended to advance Religion in America." It is quite long and many of its provisions are very quaint. From it we learn that Cokesbury is intended "to receive for education and board the sons of the elders and preachers of the Methodist Episcopal Church, poor orphans, and the sons of the subscribers and other friends. It will be expected that all our friends, who send their children to the college, will, if they be able, pay a moderate sum for their education and board; the others will be taught and boarded and, if our

[1] Strickland's *Asbury*, p. 163.

[2] Methodist Discipline, 1789, p. 40.

finances allow it, clothed gratis. The institution is also intended for the benefit of our young men, who are called to preach, that they may receive a measure of that improvement, which is highly expedient as a preparation for public service." Teachers of ancient languages and of English will be provided, and no necessary branch of literature shall be omitted. "Above all, especial care shall be taken that due attention be paid to the religion and morals of the children, and to the exclusion of all such as continue of an ungovernable temper." "The expense of such an undertaking will be very large, and the best means we could think of, at our late conference, to accomplish our design, was to desire the assistance of all those in every place who wish well to the cause of God. The students will be instructed in English, Latin, Greek, logic, rhetoric, history, geography, natural philosophy, and astronomy. To these languages and sciences shall be added, when the finances of our college will admit of it, the Hebrew, French, and German languages. But our first object shall be, to answer the designs of *Christian* education, by forming the minds of the youth, through divine aid, to wisdom and holiness by instilling into their minds the principles of true religion—speculative, experimental, and practical—and training them in the ancient way, that they may be rational, spiritual Christians. We have consented to receive children of seven years of age, as we wish to have the opportunity of teaching 'the young idea how to shoot' and gradually forming their minds, through the divine blessing, almost from their infancy, to holiness and heavenly wisdom, as well as human learning. We shall rigidly insist on their rising early in the morning (five a. m.), and we are convinced by constant observation and experience, that it is of vast importance, both to body and mind.

"We prohibit play in the strongest terms, and in this we have the two greatest writers on the subject that, perhaps, any age has produced (Mr. Locke and Mr. Rousseau) of our sentiments; for, though the latter was essentially mistaken in his

religious system, yet his wisdom in other respects and extensive genius are indisputably acknowledged. The employments, therefore, which we have chosen for the recreation of the students are such as are of greatest public utility:—agriculture and architecture.

"In conformity to this sentiment, one of the completest poetic pieces of antiquity (the Georgics of Virgil) is written on the subject of husbandry; by the perusal of which and submission to the above regulations, the students may delightfully unite the theory and practice together."

There is something extremely ludicrous in the idea of making the average student delight in spending his leisure hours in farming, by means of a study of the Georgics in the original. But we can hardly laugh at these men, they were too much in earnest. To return to the circular, "The four guineas a year for tuition, we are persuaded cannot be lowered, if we give the students that finished education, which we are determined they shall have. And, though our principal object is to instruct them in the doctrines, spirit, and practice of Christianity, yet we trust that our college will, in due time, send forth men that will be a blessing to their country in every laudable office and employment of life, thereby uniting the two greatest ornaments of human beings which are too often separated: *deep learning* and *genuine piety*."

As soon as the building was under roof, a preparatory school was opened and the Trustees applied to John Wesley for a President. He suggested a Rev. Mr. Heath, and this suggestion was accepted on December 23, 1786.[1] His inauguration occurred a year later and was a grand affair. Asbury presided on each of the three days of the ceremony, and his text on the second day, "O man of God, there is death in the pot,"[2] was looked on by the superstitious, in time to come, as a presage of disaster. The faculty was filled up and all seemed

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[1] *Asbury's Journal*, Vol. I, p. 523.

[2] II Kings, 4: 40.

to bid fair for prosperity; but Mr. Heath remained in charge of the College less than a year, resigning because of certain charges of insufficiency, which seem rather trival. Another professor left to go into business and Asbury's soul was tried by these "heavy tidings."

The good Bishop was indefatigable in his care of Cokesbury. His visits were frequent, and while there, he was very active, examining the pupils, preaching, and arranging the affairs, both temporal and spiritual. Abingdon became a centre of Methodism, families moved there to enjoy the educational advantages, and the Conference regularly visited the College, coming over from Baltimore for that purpose.

Dr. Jacob Hall, of Abingdon, was the second President, and had under him a faculty of three professors and a chaplain. The school prospered and had public exhibitions of its students' proficiency from time to time. It is doubtful if sufficient care was exercised in the expenditure of money and, in December, 1790, the Trustees felt obliged to contract a loan of £1000. The charitable contributions fell off, and Asbury was forced to go from house to house in Baltimore, "through the snow and cold, begging money for the support of the poor orphans at Cokesbury."[1] The instruction was good, and Asbury could write to Coke, then in England, that "one promising young man has gone forth into the ministry, another is ready, and several have been under awakenings. None so healthy and orderly as our children, and some promise great talents for learning."[2] Still, "all was not well there," and on October 2, 1793, he "found matters in a poor state at college; £500 in debt, and our employes £700 in arrears." A year later, matters were desperate and the good Bishop wrote that "we now make a sudden and dead pause—we mean to incorporate and breathe and take some better plan. If we can not have a Christian school (*i. e.* a school under

[1] *Journal*, December 5, 1791.

[2] *Early Schools of Methodism*, p. 31.

Christian discipline and pious teachers), we will have none."[1] The project of incorporation was not favored by some, who feared that the College would not be thereby so directly under the control of the Conference, but was carried through, and the charter bears date, December 26, 1794.[2] By it, the institution was allowed to have an income not exceeding £3,000.

How a charter was to avoid increased indebtedness does not appear and the College's debt had so increased, that the Conference in 1795 decided to suspend the Collegiate Department and have only an English Free School kept in the buildings.[3]

Misfortunes never come singly: an unsuccessful attempt to burn the buildings had been made in the fall of 1788, and now, on December 4, 1795, a completely successful one was made, and the building and its contents were consumed. Rewards to discover the incendiary were offered in vain, and Asbury writes:[4] "We have a second and confirmed report that Cokesbury College is consumed to ashes—a sacrifice of £10,000 in about ten years. If any man should give me £10,000 to do and suffer again what I have done for that house, I would not do it. The Lord called not Mr. Whitefield, nor the Methodists to build colleges. I wished only for schools; Dr. Coke wanted a college. I feel distressed at the loss of the library."

Asbury despaired, but Coke did not and, going to work, he raised £1,020 from his friends. After the determination was made to move the College to Baltimore, the Church there gave £700, and a house to house solicitation brought in £600 more. A building originally erected for balls and assemblies was purchased and fitted up. It stood next the old Light Street Methodist Church and a co-educational school was opened therein on May 2, 1796. The high course planned for girls is especially noticeable at this early period. The school opened with promises of success, and within a month there were nearly 200 scholars.

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[1] *Journal*, November 21, 1794.
[2] Act of 1794, ch. 21.
[3] Rev. Mr. Hamilton's MSS.
[4] *Journal*, January 5, 1796.

Fatality pursued the enterprise, however, and a year to a day from the burning of the first building, this second one was reduced to ashes, with the adjoining church and several houses.

Asbury writes rather philosophically:[1] "I conclude God loveth the people of Baltimore, and he will keep them poor to make them pure;" but even Coke gave up hope at this new disaster, and it was twenty years before a second Methodist College was attempted.

Asbury College.

This was the second Methodist College in the world, and was organized in 1816, the year of Bishop Asbury's death. After a year or two of successful work, a charter was applied for and it was granted to the College February 10, 1818.[2] The President, Samuel K. Jennings, M. D., a Methodist local preacher, was a rather remarkable man. Coming from New Jersey, graduating at Rutgers, and settling in the practice of the medical profession in Virginia, he was converted by the preaching of Asbury, and was persuaded by him some years later, to move to Baltimore and take the leadership of the new enterprise.[3] He was said to be, at one time, the only Methodist preacher with a collegiate education and was well adapted to the task, from his administrative ability and wide learning. Around him, he gathered an undenominational faculty of four professors and began the life of the institution in a large brick building on the corner of Park Avenue and Franklin Street. In March, 1818, the *Methodist Magazine* tells us that there were one hundred and seventy students, and that "The Asbury College has probably exceeded in its progress, considering the short time it has been established, any literary institution in the country."[4] In that spring, a

[1] *Journal*, 1796.
[2] Act of 1817, ch. 144.
[3] Sprague, *Annals of American Pulpit*, VII, 279.
[4] *History of the M. E. Church*, Vol. III.

class was graduated, and yet only a few months later Dr. Bangs wrote that the College "continued for a short time and then, greatly to the disappointment and mortification of its friends, went down as suddenly as it had come up, and Asbury College lives only in the recollection of those who rejoiced over its rise and mourned over its fall."

This statement is not absolutely correct; it is probable that there was some catastrophe, and possibly Dr. Jennings then began to break away from the Methodist Episcopal Church, which he left entirely, when the Methodist Protestant Church was formed in 1828. Still some sort of an organization was kept up under the old name; for does not good Hezekiah Niles, of Register fame, tell us of examinations and exhibitions he witnessed in the early spring of 1819,[1] at which time prodigies of learning and cramming were exhibited, and do we not find in 1824, a pamphlet published by Dr. Jennings, entitled "Remarks on the Subject of Education, to which are added the general rules of the school under the appellation of Asbury College." Apparently the College had passed entirely out of the control of the church, and having lowered its grade, was now little more than Dr. Jennings' private school. The school was then situated on the corner of Charles and Baltimore Streets and, in 1833, when we catch the last glimpse of it, another removal had taken it to the corner of South and Fayette Streets. It was then merely a boys' day school and doubtless soon perished. So the second Methodist College failed as the first had done and another was added to the many abortive attempts to found a college in Maryland.

Other Extinct Colleges.

Three other attempts to found colleges demand a passing notice.

Mount Hope College stood at the corner of Eutaw Place and North Avenue, and was charted as a college in 1833.[2]

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[1] *Niles' Register*, February 20, 1819.

[2] Act of 1832, ch. 199.

The building was constructed by the Baltimore branch of the United States Bank in 1800, during an epidemic of yellow fever in the city. People feared to come into town to transact business and so a suburban banking house was built. This building was bought by the Rev. Frederick Hall in 1828 and in it a school was begun, which was later expanded into the College. The institution lasted some ten years and is worthy of note from the fact that among the teachers were two young Yale graduates, who afterwards obtained considerable renown: Professor Elias Loomis and Rev. S. W. S. Dutton.

The College of St. James was situated in Washington County and was originally intended by its founder, Bishop Whittingham, as a preparatory school. It was opened in October, 1842, with Rev. J. B. Kerfoot,[1] afterwards Bishop of Pittsburg, as Principal, and had such speedy and encouraging success, that it was chartered as a college in 1843, under the control of the Protestant Episcopal Church.

The College prospered greatly under Bishop Kerfoot's able management, and was kept up during the War of the Rebellion in spite of the loss of Southern students, a large portion of the entire number. In 1864, however, General Early, of the Confederate Army, invaded Maryland and took Dr. Kerfoot and Professor Coit prisoners, and the College thus forcibly discontinued, was never again reorganized.

Newton University was chartered by the Legislature[2] on March 8, 1845 and was situated on Lexington Street, between North and Calvert. It was originally intended to combine the Baltimore preparatory schools and to furnish boys, graduating from them, the means of completing their education without leaving the city. There was an enormous list of Trustees and the unwieldy character of the board, coupled with the irregular habits of the President, made the failure of the enterprise inevitable. Still it offered in its catalogues

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[1] *Life of Bishop Kerfoot*, by Rev. Hall Harrison.

[2] Act of 1844, ch. 272.

a good course of study and gave exhibitions, at which polyglot orations were delivered. The late Prof. Perley R. Lovejoy was the life of the institution and, after several classes had graduated, the University finally ceased to be, when Mr. Lovejoy accepted a position as Professor in the Baltimore City College.

Roman Catholic Colleges.

Maryland has been the cradle of the Roman Catholic Church in America, as well as of the Methodist and the Presbyterian. The centenary of the consecration of John Carroll, as the first Roman Catholic bishop in the United States, occurred little more than a year ago. A few months after Bishop Carroll's consecration, he received from the Superior of the Order of St. Sulpice an offer to found a seminary in Baltimore for the education of priests. This offer was accepted and, on July 10, 1791, four Sulpician priests arrived in Baltimore. They soon bought a house known as "One Mile Tavern" with four acres of land and there they opened ***St. Mary's Seminary,*** on the first Sunday in October, 1791. The Seminary still occupies the same site, at the corner of Paca and St. Mary's Streets. The number of the candidates for the priesthood, who entered the Seminary, was disappointing from its smallness and, in order to procure clerics, an Academy was opened in the rooms of the Seminary, on August 20, 1799. This was presided over by Rev. Wm. Du Bourg, and proved so successful, as to demand a separate building. Accordingly, the corner-stone of St. Mary's College was laid on April 10, 1800. At Bishop Carroll's request, no American boys were admitted for a time and only Spaniards and French were received. In 1803, however, the College was opened to all day scholars or boarders, without reference to birth or religion. This step roused some opposition and many communications upon the subject appeared in the newspapers, which were afterwards collected in pamphlet form.

The students soon became numerous and the institution grew to such an extent that, in January, 1805, it was chartered as St. Mary's University. On August 13, 1806, the first class was graduated; in that year there were 106 students. New buildings were erected and a superb botanical garden was laid out. The chapel, built soon after the incorporation, was said to be the most beautiful in the United States.

The Rev. William Du Bourg, the President, was a man of great ability and the reputation of the College rapidly spread. Many prominent men, Roman Catholics and Protestants, were graduated from St. Mary's; but the Sulpicians felt that their vocation was to educate young men exclusively for the priesthood, and not for secular life, and they finally closed St. Mary's College in 1852, in order to devote all their energies to the Theological Seminary, which has continued its prosperous career to this present day.[1]

A second Roman Catholic College was formed by the Sulpicians in 1807 at Emmittsburg, Frederick County. It was begun by Rev. John Dubois and was soon chartered as ***Mount Saint Mary's College.*** The exercises were first held in a log house with a handful of pupils, who increased to 80 within five years. With the growth of the institution came the demand for larger accommodations. Better buildings were erected and a large stone edifice was undertaken in 1823. When nearly ready for occupancy, it was destroyed by fire; but Father Dubois did not despair and, aided by the people of the vicinity, at once began a new building. In 1826 he was appointed Bishop of New York, and in the same year, the connection of the College with the Sulpician order was terminated. Although originally intended chiefly as a place for the education of clerics, Mt. St. Mary's has ever kept in view the preparation of students for a secular life, and many of its graduates have been distinguished in State, as well as in Church. In 1838, Rev. John McCaffrey, D. D., became president, and

[1] MSS. of Fr. G. E. Viger.

under his able control, the College prospered until 1871. During this period, the jubilee of the institution was celebrated with great ceremony in 1858. The Civil War injured the College greatly and the declaration of peace found it burdened with a heavy load of debt. For twenty years the struggle went on and it was doubtful all the time, whether the College could survive. Finally Dr. William Bryne, at his leaving the presidency in 1884, was able to report that the institution was placed on a firm financial basis as to the future, and that the debt had been reduced to $65,000. The present President, Rev. Edward P. Allen, has still further diminished the debt by more than half and the attendance has been largely increased through his efficient administration.

A third Roman Catholic College is ***St. Charles's,*** situated in Howard County, near Ellicott City. It is situated on land given by Charles Carroll of Carrollton, and was chartered on February 3, 1830,[1] its name being taken from that of its founder and of the great Archbishop of Milan.[2] The institution was placed under the control of the Society of St. Sulpice and was established "exclusively for the education of pious young men of the Catholic persuasion for the ministry of the Gospel." The corner-stone was laid by the venerable Charles Carroll, on July 11, 1831; but, for want of funds to carry on the work successfully, the institution was not opened until the fall of 1848. The first President, Rev. O. L. Jenkins, began the institution with four pupils, and at his death in 1869, the number had grown to 140. Since the closing of St. Mary's College in 1852, St. Charles's has been used by the Sulpicians as preparatory to St. Mary's Seminary.

To supply the want of a college, to which Baltimore boys of Roman Catholic families could go without leaving home, ***Loyola College*** was opened in September, 1852. It is under the control of the Jesuits and has confined itself to receiving day scholars.

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[1] Act of 1830, ch. 50.

[2] MSS. of Rev. G. E. Viger.

The fifth and last Roman Catholic College, ***Rock Hill,*** was chartered in 1865.[1] It is situated near Ellicott City, as is St. Charles's, and is under the supervision of the Brothers of the Christian Schools. It prepares youth for the various duties and occupations of life with great thoroughness, and has ever been noted especially for the attention paid to the development of the body as well as the mind of its pupils.

Western Maryland College.

In 1865, Mr. Fayette R. Buell began an academy for boys and girls at Westminster, Carroll County,[2] and, in the spring of 1866, he proposed to the Conference of the Methodist Protestant Church, of which he was a member, that the school should be chartered as a college and taken under the Church's patronage. This proposition was not acceded to, but Mr. Buell went on with his plan. Confidence in the Rev. J. T. Ward, one of the teachers in Mr. Buell's school, induced two of his friends to lend the enterprise $10,000, and the corner-stone of the College building was laid on September 6, 1886. The College opened a year later with seventy-three pupils. In February, 1868, Mr. Buell found himself so much in debt, that he appealed to the Conference to take the property off his hands. This was done, and a Board of Trustees appointed by the Conference was incorporated by the legislature on March 30, 1868.

The next fall, the institution reopened with Rev. J. T. Ward as President, in which office he continued for seventeen years. These were years of trouble and severe work to make the College a success. There was no endowment, and only by the most strenuous efforts was the College saved on several occasions from being overwhelmed with debt. Still, in spite of all disadvantages, good work was done and valuable experience was gained. The College has been a co-educational one

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[1] Act of 1865, ch. 10.

[2] Lewis, *Outline of Western Maryland College.*

from the first, and connected with it was a department of Biblical Literature, for such as intended to become clergymen, until a separate Theological School was opened in 1882. During Dr. Ward's administration, new buildings were erected and, at his resignation in 1886, he left the institution ready to be made still more efficient by his successor. Rev. Thomas H. Lewis succeeded as President and, while he has caused the work and equipment of the College to be further enlarged, he has also been successful in paying off the last dollar of the debt that had hung over it so long as an incubus.

Female Education.

The Baltimore Female College, so long presided over by Dr. N. C. Brooks, was the pioneer institution in Maryland for the higher education of women. Founded in 1849, it long had a prosperous existence; but finally was obliged to close its doors in June, 1890, on account of the withdrawal of the grant formerly given by the State.

Besides this institution there was no successful attempt in Maryland to found a college for female education, until the ***Woman's College of Baltimore*** was chartered in 1884.[1] It was founded by the Methodist Episcopal Church, in honor of the centenary of its organized existence in this country, and is "denominational but not sectarian." For it beautiful buildings, adjoining the First Methodist Church, have been erected on St. Paul Street. Much of the money for its endowment was given by the present President, the Rev. J. F. Goucher, D. D., and, largely through his influence, was it able to open its doors to students on September 13, 1888. It has determined, very sensibly, to grant no degrees, save to those thoroughly fitted to receive them, and so has had no graduates up to the present. Its growth under the care of W. H. Hopkins, Ph. D., its first President, was great in numbers and

[1] MSS. of Pres. W. H. Hopkins.

endowment and the prospects are now fair for this Baltimore Woman's College taking high rank among similar institutions.

Conclusion.

To a superficial observer from a distance, it sometimes seems as if University education in Maryland began with the foundation of the Johns Hopkins University, a sketch of which follows from the pen of its honored President. Our study into the history of education in the State, however, has shown us that Maryland, instead of being one of the latest of the United States to conceive the University idea, was, in fact, one of the very earliest, and that her institutions have a history of which they need not be ashamed; though their work has not been so widely known as some others and though the bright promise of morning, in many cases, has not been followed by the full development of noontide.

The patient labors of William Smith, of Hector Humphreys, of Francis Asbury, of John Dubois, and of many others, have been far from lost. Wherein they failed, they gained valuable experience for their successors, and wherein they succeeded, they helped to instil "into the minds and hearts of the citizens, the principles of science and good morals."

THE JOHNS HOPKINS UNIVERSITY

(1876–1891).

BY DANIEL C. GILMAN.

FOUNDATION.

The year 1876 is commonly taken as the date of the foundation of the Johns Hopkins University, as in that year its doors were opened for the reception of students. On the twenty-second of February the plans of the University were publicly made known, and consequently "Washington's Birthday" has since been observed as an anniversary or commemoration day. But in reality the Trustees were organized nine years before. The founder, Johns Hopkins, as he saw the end of life approaching (although he continued in active business for several years afterwards), determined to bestow a large part of his fortune upon two institutions which he proposed to establish, a University and a Hospital. These establishments were to be managed by separate Boards of Trustees, citizens of Baltimore, whom he selected for their integrity, wisdom, and public spirit. In order that the two Boards might be closely allied, the founder was careful that a majority of the Trustees of one corporation should also be a majority of the Trustees of the other corporation, and in a letter which he left as the final expression of his wishes, he declared it to be his "constant wish and purpose that the Hospital should ultimately

form a part of the Medical School of the University." The Hospital was opened for the reception of patients in May, 1889; and a volume which was prepared in the following year by Dr. J. S. Billings, gives a full description of the buildings, with other papers illustrative of the history and purposes of that great charity. But as the Medical School, which is to form the bond of union between the two establishments has not yet been organized, the following statements will only refer to those opportunities which are here provided for the study of science and literature, in the faculty commonly known as the faculty of philosophy and the liberal arts.

Before speaking of his gifts, a few words should be devoted to the memory of Johns Hopkins. This large-minded man, whose name is now renowned in the annals of American philanthropy, acquired his fortune by slow and sagacious methods. He was born in Anne Arundel county, Maryland, not far from the city of Annapolis, of a family which for several generations had adhered to the views of the Society of Friends. His ancestors were among the earliest settlers of the colony. While still a boy, Johns Hopkins came to Baltimore without any capital but good health, the good habits in which he had been brought up, and unusual capacity for a life of industrious enterprise. He began on the lowest round of the ladder of fortune, and by his economy, fidelity, sagacity, and perseverance he rose to independence and influence. He was called to many positions of financial responsibility, among the most important being that of President of the Merchants' National Bank, and that of a Director in the Baltimore and Ohio Railroad Company. He was a man of positive opinions in political affairs, yet he never entered political life; and although he contributed to the support of educational and benevolent societies he was not active in their management. In the latter part of his life, he dwelt during the winter in a large mansion, still standing on the north side of Saratoga street, west of North Charles street, and during the

summer on an estate called Clifton, in Baltimore County. In both these places he exercised hospitality without ostentation. He bought a large library and many oil paintings which are now preserved in a memorial room at the Hospital. Nevertheless, his pursuits were wholly mercantile, and his time and strength were chiefly devoted to the business in which he was engaged,—first as a wholesale grocer, and afterwards as a capitalist interested in many and diverse financial undertakings. More than once, in time of commercial panic, he lent his credit to the support of individuals and firms with a liberality which entitled him to general gratitude. He died in Baltimore, December 24, 1873, at the age of seventy-nine years. He had never married. After providing for his near relations, he gave the principal part of his estate to the two institutions which bear his name, the Johns Hopkins University and the Johns Hopkins Hospital. Each of them received property estimated in round numbers at three and a half million dollars. The gift to the University included his estate of Clifton (three hundred and thirty acres of land), fifteen thousand shares of the common stock of the Baltimore and Ohio Railroad, and other securities which were valued at seven hundred and fifty thousand dollars.

Many persons have expressed surprise that Mr. Hopkins should have made so large an investment in one corporation. But the stock of the Baltimore and Ohio Railroad was free from taxation, for many years it paid a dividend of ten per cent. per annum, and the managers, of whom he was one, confidently anticipated that a large stock dividend would be declared at an early day. Mr. Hopkins not only gave to the University all the common stock that he held in this corporation; he also advised that the Trustees should not dispose of it, nor of the stock accruing thereon by way of increment or dividend. In view of the vibrations to which this stock was subjected during the fifteen years subsequent to the death of Mr. Hopkins, it should not be forgotten that it was his will that linked the fortune of the great educational institution, which

he founded, to the fortune of another corporation, in which he had the highest confidence. Fortunately, the crisis into which this union led, has been successfully passed. The friends of the University generously subscribed for its support an "emergency fund" of more than $100,000. Other large gifts were made and others still are known to be in the future. The Trustees, moreover, have changed four-fifths of their holdings of the common stock of the railroad company above mentioned, into its preferred stock, from which a permanent income of six per centum will be derived. The finances of the University are now on a solid basis, although additional gifts will be required for the construction of buildings and for the enlargement of the course of study, and still more before a medical department can be instituted.

Preliminary Organization.

The Johns Hopkins University was incorporated under the laws of the State of Maryland, August 24, 1867. Three years later, June 13, 1870, the Trustees met and elected a President and a Secretary of the Board. They did not meet again until after the death of Mr. Hopkins, when they entered with a definite purpose on the work for which they were associated. They collected a small but excellent library of books, illustrating the history of the universities of this and of other lands; they visited in a body Cambridge, New Haven, Ithaca, Ann Arbor, Philadelphia, Charlottesville, and other seats of learning; they were favored with innumerable suggestions and recommendations from those who knew much about education, and from those who knew little; and they invited several scholars of distinction to give them their counsel. Three presidents of colleges gave them great assistance, answering in the frankest manner all the searching questions which were put to them by a sagacious committee. Grateful acknowledgments will always be due to these three gentlemen: Charles W. Eliot, LL. D.,

President of Harvard University, Andrew D. White, LL. D., President of Cornell University, and James B. Angell, LL. D., President of the University of Michigan.

Inaugural Assembly.

The election of a President of the University took place in December, 1874. He entered upon the duties of his station in the following spring, and in the summer of 1875, at the request of the Trustees, he went to Europe and conferred with many leaders of university education in Great Britain and on the continent. At the same time he visited many of the most important seats of learning. During the following winter the plans of the University were formulated and were made public in the Inaugural Address of the President, which was delivered on the 22nd of February, 1876, before a large audience assembled in the Academy of Music.

On this occasion, the Governor of the State, Hon. John Lee Carroll; the Mayor of the City, Hon. Ferdinand C. Latrobe; the Presidents and representative Professors of a large number of Universities and Colleges; the Trustees and other officers of the scientific, literary and educational institutions of Baltimore; the State and City officers of public instruction and other invited guests, together with the Trustees of Johns Hopkins, occupied the platform. The house was filled with an attentive audience.

At eleven o'clock, the chair was taken by the President of the Trustees, Mr. Galloway Cheston. The orchestra of the Peabody Institute, directed by Professor Asger Hamerik, performed several pieces of classical music.

A prayer was then offered up by Rev. Alfred M. Randolph, D. D., of Emmanuel Church, now Assistant Bishop of Virginia, after which the Chairman of the Executive Committee, Mr. Reverdy Johnson, Jr., said:

"Our gathering to-day is one of no ordinary interest. From all sections of our State, from varied sections of our

land, we have met at the opening of another avenue to social progress and national renown. After two years of pressing responsibility and anxious care the Trustees of the Johns Hopkins University present the first detailed account of their trust. Of the difficulties attending the discharge of their duty; of the nice balancing of judgment; of the careful investigation and continued labor called for in the organization of the University, this is not the place to speak; but for the Board of Trustees, I may be allowed to claim the credit of entire devotion to the work, and a sincere desire to make of the University all that the public could expect from the generous foundation. Happily, our action is unfettered, and where mistakes occur, as occur they must, the will and power are at hand to correct them. We may say that the University's birth takes place today, and I do not think it mere sentiment, should we dwell with interest upon its concurrence with the centennial year of our national birth, and the birthday of him who led the nation from the throes of battle to maturity and peace. But it is not my province to detain you from the exercises which are to follow. I am happy to state that we have among us to-day one who represents the highest type of American education, and one who, from the beginning, has sympathized with, counselled and aided us. I know you anticipate me, as I announce the distinguished name, from the most distinguished seat of learning in our land—President Eliot, of Harvard University."

Address of President Eliot.

President Eliot next delivered a Congratulatory Address in which he said:

"The oldest University of the country cordially greets the youngest, and welcomes a worthy ally—an ally strong in material resources and in high purpose.

"I congratulate you, gentlemen, Trustees of the Johns Hopkins University, upon the noble work which is before

you. A great property, an important part of the fruit of a long life devoted with energy and sagacity to the accumulation of riches, has been placed in your hands, upon conditions as magnanimous as they are wise, to be used for the public benefit in providing for coming generations the precious means of liberal culture. Your Board has great powers. It must hold and manage the property of the University, make all appointments, fix all salaries, and, while leaving both legislative and administrative details to the several faculties which it will create, it must also prescribe the general laws of the University. Your cares and labor will grow heavy as time goes on; but in accordance with an admirable usage, fortunately established in this country, you will serve without other compensation than the public consideration which will justly attach to your office, and the happy sense of being useful. The actuating spirit of your Board will be a spirit of scrupulous fidelity to every trust reposed in you, and of untiring zeal in promoting the welfare of the University and the advancement of learning. Judged by its disinterestedness, its beneficence and its permanence, your function is as pure and high as any that the world knows, or in all time has known. May the work which you do in the discharge of your sacred trust be regarded with sympathetic and expectant forbearance by the present generation, and with admiration and gratitude by posterity.

"The University which is to take its rise in the splendid benefaction of Johns Hopkins must be unsectarian. None other could as appropriately be established in the city named for the Catholic founder of a colony to which all Christian sects were welcomed, or in the State in which religious toleration was expressly declared in the name of the Government for the first time in the history of the Christian world. There is a too common opinion that a college or university which is not denominational must therefore be irreligious; but the absence of sectarian control should not be confounded with lack of piety. A university whose officers and students are

divided among many sects need no more be irreverent and irreligious than the community which in respect to diversity of creeds it resembles. It would be a fearful portent if thorough study of nature and of man in all his attributes and works, such as befits a university, led scholars to impiety. But it does not; on the contrary, such study fills men with humility and awe, by bringing them on every hand face to face with inscrutable mystery and infinite power. The whole work of a university is uplifting, refining and spiritualizing: it embraces

> whatsoever touches life
> With upward impulse; be He nowhere else,
> God is in all that liberates and lifts;
> In all that humbles, sweetens and consoles.

"A university cannot be built upon a sect, unless, indeed, it be a sect which includes the whole of the educated portion of the nation. This University will not demand of its officers and students the creed, or press upon them the doctrine of any particular religious organization; but none the less—I should better say, all the more—it can exert through high-minded teachers a strong moral and religious influence. It can implant in the young breasts of its students exalted sentiments and a worthy ambition; it can infuse into their hearts the sense of honor, of duty, and of responsibility.

"I congratulate the city of Baltimore, Mr. Mayor, that in a few generations she will be the seat of a rich and powerful university. To her citizens its grounds and buildings will in time become objects of interest and pride. The libraries and other collections of a university are storehouses of the knowledge already acquired by mankind, from which further invention and improvement proceed. They are great possessions for any intelligent community. The tone of society will be sensibly affected by the presence of a considerable number of highly educated men, whose quiet and simple lives are devoted to philosophy and teaching, to the exclusion of the common objects of human pursuit. The University will hold

high the standards of public duty and public spirit, and will enlarge that cultivated class which is distinguished, not by wealth merely, but by refinement and spirituality.

"I felicitate the State of Maryland, whose Chief Magistrate honors this assembly with his presence, upon the establishment within her borders of an independent institution of the highest education. The elementary school is not more necessary to the existence of a free State than the University. The public school system depends upon the institutions of higher education, and could not be maintained in real efficiency without them. The function of colleges, universities, and professional schools is largely a public function; their work is done primarily, indeed, upon individuals, but ultimately for the public good. They help powerfully to form and mould aright the public character; and that public character is the foundation of everything which is precious in the State, including even its material prosperity. In training men thoroughly for the learned professions of law and medicine, this University will be of great service to Maryland and the neighboring States. During the past forty years the rules which governed admission to these honorable and confidential professions have been carelessly relaxed in most of the States of the Union, and we are now suffering great losses and injuries, both material and moral, in consequence of thus thoughtlessly abandoning the safer ways of our fathers. It is for the strong universities of the country to provide adequate means of training young men well for the learned professions, and to set a high standard for professional degrees.

"President Gilman, this distinguished assembly has come together to give you God-speed. I welcome you to arduous duties and grave responsibilities. In the natural course of life you will not see any large part of the real fruits of your labors; for to build a university needs not years only, but generations; but though 'deeds unfinished will weigh on the doer,' and anxieties will sometimes oppress you, great privileges are nevertheless attached to your office. It is a precious

privilege that in your ordinary work you will have to do only with men of refinement and honor; it is a glad and animating sight to see successive ranks of young men pressing year by year into the battle of life, full of hope and courage, and each year better armed and equipped for the strife; it is a privilege to serve society and the country by increasing the means of culture; but, above all, you will have the great happiness of devoting yourself for life to a noble public work without reserve, or stint, or thought of self, looking for no advancement, 'hoping for nothing again.' Knowing well by experience the nature of the charge which you this day publicly assume, familiar with its cares and labors, its hopes and fears, its trials and its triumphs, I give you joy of the work to which you are called, and welcome you to a service which will task your every power.

"The true greatness of States lies not in territory, revenue, population, commerce, crops or manufactures, but in immaterial or spiritual things; in the purity, fortitude and uprightness of their people, in the poetry, literature, science and art which they give birth to, in the moral worth of their history and life. With nations, as with individuals, none but moral supremacy is immutable and forever beneficent. Universities, wisely directed, store up the intellectual capital of the race, and become fountains of spiritual and moral power. Therefore our whole country may well rejoice with you, that you are auspiciously founding here a worthy seat of learning and piety. Here may young feet, shunning the sordid paths of low desire and worldly ambition, walk humbly in the steps of the illustrious dead—the poets, artists, philosophers and statesmen of the past; here may fresh minds explore new fields and increase the sum of knowledge; here from time to time may great men be trained up to be leaders of the people; here may the irradiating light of genius sometimes flash out to rejoice mankind; above all, here may many generations of manly youth learn righteousness."

Inaugural Address of the First President.

In his inaugural address, the President of the Johns Hopkins University, after a grateful reference to the founder and his generosity, and a reminder that the endowment, large as it appears, is not large when compared with the acquisitions of many other institutions, called attention to some of the special distinctions of this gift. Among them were named: the freedom from conditions; the absence of political or ecclesiastical control; the connection with an endowed hospital; the geographical advantages of Baltimore; and the timeliness of the foundation. Five agencies for the promotion of superior instruction were next briefly discussed, universities, learned academies, colleges, technical schools, and museums. The object of these paragraphs was to suggest the distinctive Idea of the University, and to show that while forms and methods vary in different countries, the freedom for investigation, the obligation to teach, and the careful bestowal of academic honors are always understood to be among the university functions. Wherever a strong university is established, learned societies, colleges, technical schools, and museums are clustered. It is the sun and they are the planets.

Twelve points were then enumerated on which there is a consensus so general that further discussion seemed needless.

1. All sciences are worthy of promotion; or in other words, it is useless to dispute whether literature or science should receive most attention, or whether there is any essential difference between the old and the new education.

2. Religion has nothing to fear from science, and science need not be afraid of religion. Religion claims to interpret the word of God, and science to reveal the laws of God. The interpreters may blunder, but truths are immutable, eternal, and never in conflict.

3. Remote utility is quite as worthy to be thought of as immediate advantage. Those ventures are not always most sagacious that expect a return on the morrow. It sometimes

pays to send our argosies across the seas,—to make investments with an eye to slow but sure returns. So it is always in the promotion of science.

4. As it is impossible for any university to encourage with equal freedom all branches of learning, a selection must be made by enlightened governors, and that selection must depend on the requirements and deficiencies of a given people, in a given period. There is no absolute standard of preference. What is more important at one time or in one place may be less needed elsewhere and otherwise.

5. Individual students cannot pursue all branches of learning, and must be allowed to select, under the guidance of those who are appointed to counsel them. Nor can able professors be governed by routine. Teachers and pupils must be allowed great freedom in their method of work. Recitations, lectures, examinations, laboratories, libraries, field exercises, travel, are all legitimate means of culture.

6. The best scholars will almost invariably be those who make special attainments on the foundation of a broad and liberal culture.

7. The best teachers are usually those who are free, competent, and willing to make original researches in the library and the laboratory.

8. The best investigators are usually those who have also the responsibilities of instruction, gaining thus the incitement of colleagues, the encouragement of pupils, the observation of the public.

9. Universities should bestow their honors with a sparing hand; their benefits most freely.

10. A university cannot be created in a day; it is a slow growth. The University of Berlin has been quoted as a proof of the contrary. That was indeed a quick success, but in an old, compact country, crowded with learned men eager to assemble at the Prussian court. It was a change of base rather than a sudden development.

11. The object of the university is to develop character—to make men. It misses its aim if it produces learned pedants, or simple artisans, or cunning sophists, or pretentious practitioners. Its purport is not so much to impart knowledge to the pupils, as to whet the appetite, exhibit methods, develop powers, strengthen judgment, and invigorate the intellectual and moral forces. It should prepare for the service of society a class of students who will be wise, thoughtful, progressive guides in whatever department of work or thought they may be engaged.

12. Universities easily fall into ruts. Almost every epoch requires a fresh start.

If these twelve points are conceded, our task is simplified, though it is still difficult. It is to apply these principles to Baltimore in 1876. We are trying to do this with no controversy as to the relative importance of letters and science, the conflicts of religion and science, or the relation of abstractions and utilities; our simple aim is to make scholars, strong, bright, useful and true.

Proceeding to speak of the Johns Hopkins University, the speaker then announced that at first the Faculty of Philosophy would alone be organized, where instruction would be given in language, mathematics, ethics, history and science. The Medical Faculty would not long be delayed. That of Jurisprudence would come in time. That of Theology is not now proposed.

The next paragraphs of the address will be given without abbreviation.

Who shall our teachers be?

This question the public has answered for us; for I believe there is scarcely a preëminent man of science or letters, at home or abroad, who has not received a popular nomination for the vacant professorships. Some of these candidates we shall certainly secure, and their names will be one by one made known. But I must tell you, in domestic confidence, that it is not an easy task to transplant a tree which is deeply

rooted. It is especially hard to do so in our soil and climate. Though a migratory people, our college professors are fixtures. Such local college attachments are not known in Germany; and the promotions which are frequent in Germany are less thought of here. When we think of calling foreign teachers, we encounter other difficulties. Many are reluctant to cross the sea; and others are, by reason of their lack of acquaintance with our language and ways, unavailable. Besides we may as well admit that London, Paris, Leipsic, Berlin, and Vienna afford facilities for literary and scientific growth and influence, far beyond what our country affords. Hence, it is probable that among our own countrymen, our faculty will be chiefly found.

I wrote, not long ago, to an eminent physicist, presenting this problem in social mechanics, for which I asked his solution. "We cannot have a great university without great professors; we cannot get great professors till we have a great university: help us from the dilemma." Let me tell his answer: "Your difficulty," he says, "applies only to old men who are great; these you can rarely move; but the young men of genius, talent, learning and promise, you can draw. They should be your strength."

The young Americans of talent and promise—there is our strength, and a noble company they are! We do not ask from what college, or what state, or what church they come; but what do they know, and what can they do, and what do they want to find out.

In the biographies of eminent scholars, it is curious to observe how many indicated in youth preëminent ability. Isaac Casaubon, whose name in the sixteenth century shed lustre on the learned circles of Geneva, Montpellier, Paris, London and Oxford, began as professor of Greek, at the age of twenty-two; and Heinsius, his Leyden contemporary, at eighteen. It was at the age of twenty-eight, that Linnaeus first published his *Systema Naturæ*. Cuvier was appointed a professor in Paris at twenty-six, and, a few months later, a

member of the Institute. James Kent, the great commentator on American law, began his lectures in Columbia College at the age of thirty-one. Henry was not far from thirty years of age when he made his world-renowned researches in electro-magnetism; and Dana's great work on mineralogy was first published before he was twenty-five years old, and about four years after he graduated at New Haven. Look at the Harvard lists:—Everett was appointed Professor of Greek at twenty-one; Benjamin Peirce, of Mathematics at twenty-four; and Agassiz was not yet forty when he came to this country. For fifty years Yale College rested on three men selected in their youth by Dr. Dwight, and almost simultaneously set at work; Day was twenty-eight, Silliman, twenty-three, and Kingsley, twenty-seven, when they began their professorial lives. The University of Virginia, early in its history, attracted foreign teachers, who were all young men.

We shall hope to secure a strong staff of young men, appointing them because they have twenty years before them; selecting them on evidence of their ability; increasing constantly their emoluments, and promoting them because of their merit to successive posts, as scholars, fellows, assistants, adjuncts, professors and university professors. This plan will give us an opportunity to introduce some of the features of the English fellowship and the German system of privat-docents; or in other words, to furnish positions where young men desirous of a university career may have a chance to begin, sure at least of a support while waiting for promotion.

Our plans begin but do not end here. As men of distinction, who have won the highest rank in their callings, are known to be free, we shall invite them to come among us.

If we would maintain a university, great freedom must be allowed both to teachers and scholars. This involves freedom of methods to be employed by the instructors on the one hand, and on the other, freedom of courses to be selected by the students.

But this freedom is based on laws,—two of which cannot be too distinctly or too often enunciated. A law which should govern the admission of pupils is this, that before they win this privilege they must have been matured by the long, preparatory discipline of superior teachers, and by the systematic, laborious, and persistent pursuit of fundamental knowledge; and a second law, which should govern the work of professors, is this, that with unselfish devotion to the discovery and advancement of truth and righteousness, they renounce all other preferment, so that, like the greatest of all teachers, they may promote the good of mankind.

I see no advantage in our attempting to maintain the traditional four-year class-system of the American colleges. It has never existed in the University of Virginia; it is modified, though not nominally given up at Harvard; it is not an important characteristic of Michigan and Cornell; it is not known in the English, French or German universities. It is a collegiate rather than a university method. If parents or students desire us to mark out prescribed courses, either classical or scientific, lasting four years, it will be easy to do so. But I apprehend that many students will come to us excellent in some branches of a liberal education and deficient in others—good perhaps in Greek, Latin and mathematics; deficient in chemistry, physics, zoölogy, history, political economy, and other progressive sciences. I would give to such candidates on examination, credit for their attainments, and assign them in each study the place for which they are fitted. A proficient in Plato may be a tyro in Euclid. Moreover, I would make attainments rather than time the condition of promotion; and I would encourage every scholar to go forward rapidly or go forward slowly, according to the fleetness of his foot and his freedom from impediment. In other words, I would have our University seek the good of individuals rather than of classes.

The sphere of a university is sometimes restricted by its walls or is limited to those who are enrolled on its lists.

There are three particulars in which we shall aim at extra-mural influence: first, as an examining body, ready to examine and confer degrees or other academic honors on those who are trained elsewhere; next, as a teaching body, by opening to educated persons (whether enrolled as students or not) such lectures as they may wish to attend, under certain restrictions —on the plan of the lectures in the high seminaries of Paris; and, finally, as in some degree at least a publishing body, by encouraging professors and lecturers to give to the world in print the results of their researches.

What are we aiming at?

An enduring foundation; a slow development; first local, then regional, then national influence; the most liberal promotion of all useful knowledge; the special provision of such departments as are elsewhere neglected in the country; a generous affiliation with all other institutions, avoiding interferences, and engaging in no rivalry; the encouragement of research; the promotion of young men; and the advancement of individual scholars, who by their excellence will advance the sciences they pursue, and the society where they dwell.

No words could indicate our aim more fitly than those by which John Henry Newman expresses his "Idea of the University," in a page glowing with enthusiasm, to which I delight to revert.

What will be our agencies?

A large staff of teachers; abundance of instruments, apparatus, diagrams, books, and other means of research and instruction; good laboratories, with all the requisite facilities; accessory influences, coming both from Baltimore and Washington; funds so unrestricted, charter so free, schemes so elastic, that as the world goes forward, our plans will be adjusted to its new requirements.

What will be our methods?

Liberal advanced instruction for those who want it; distinctive honors for those who win them; appointed courses

for those who need them; special courses for those who can take no other; a combination of lectures, recitations, laboratory practice, field work and private instruction; the largest discretion allowed to the Faculty consistent with the purposes in view; and, finally, an appeal to the community to increase our means, to strengthen our hands, to supplement our deficiencies, and especially to surround our scholars with those social, domestic and religious influences which a corporation can at best imperfectly provide, but which may be abundantly enjoyed in the homes, the churches and the private associations of an enlightened Christian city.

Citizens of Baltimore and Maryland.—This great undertaking does not rest upon the Trustees alone; the whole community has a share in it. However strong our purposes, they will be modified, inevitably, by the opinions of enlightened men; so let parents and teachers incite the youth of this commonwealth to high aspirations; let wise and judicious counsellors continue their helpful suggestions, sure of being heard with grateful consideration; let skilful writers, avoiding captiousness on the one hand and compliment on the other, uphold or refute or amend the tenets here announced; let the guardians of the press diffuse widely a knowledge of the benefits which are here provided; let men of means largely increase the usefulness of this work by their timely gifts.

At the moment there is nothing which seems to me so important, in this region, and indeed in the entire land, as the promotion of good secondary schools, preparatory to the universities. There are old foundations in Maryland which require to be made strong, and there is room for newer enterprises, of various forms. Every large town should have an efficient academy or high school; and men of wealth can do no greater service to the public than by liberally encouraging, in their various places of abode, the advanced instruction of the young. None can estimate too highly the good which came to England from the endowment of Lawrence Sheriff at Rugby, and of Queen Elizabeth's school at Westminster, or

the value to New England of the Phillips foundations in Exeter and Andover.

Every contribution made by others to this new University will enable the Trustees to administer with greater liberality their present funds. Special foundations may be affiliated with our trust, for the encouragement of particular branches of knowledge, for the reward of merit, for the construction of buildings; and each gift, like the new recruits of an army, will be more efficient because of the place it takes in an organized and efficient company. It is a great satisfaction in this world of changes and pecuniary loss to remember what safe investments have been made at Harvard and Yale, and other old colleges, where dollar for dollar is still shown for every gift.

The atmosphere of Maryland seems favorable to such deeds of piety, hospitality and "good-will to men." George Calvert, the first Lord Baltimore, comes here, returns to England and draws up a charter which becomes memorable in the annals of civil and religious liberty, for which, "he deserves to be ranked," (as Bancroft says), "among the most wise and benevolent lawgivers of all ages;" among the liberals of 1776 none was bolder than Charles Carroll of Carrollton; John Eager Howard, the hero of Cowpens, is almost equally worthy of gratitude for the liberality of his public gifts; John McDonogh, of Baltimore birth, bestows his fortune upon two cities for the instruction of their youth; George Peabody, resident here in early life, comes back in old age to endow an Athenæum, and begins that outpouring of munificence which gives him a noble rank among modern philanthropists; Moses Sheppard bequeaths more than half a million for the relief of mental disease; Rinehart, the teamster boy, attains distinction as a sculptor, and bequeaths his hard-won acquisitions for the encouragement of art in the city of his residence; and a Baltimorean still living, provides for the foundation of an astronomical observatory in Yale College; while Johns Hopkins lays a foundation for learning and charity, which we celebrate to-day.

The closing sentences of the discourse were addressed to the young men of Baltimore and to the Trustees.

The Faculty.

One of the earliest duties which devolved upon the President and Trustees, after deciding upon the general scope of the University, was to select a staff of teachers by whose assistance and counsel the details of the plan should be worked out. It would hardly be right in this place to recall the distinctive merits of the able and learned scholars who have formed the academic staff during the first fourteen years, but perhaps the writer may be allowed to pay in passing a tribute of gratitude and respect to those who entered the service of the University at its beginning. To their suggestions, their enthusiasm, their learning, and above all their freedom from selfish aims and from petty jealousies, must be attributed in a great degree the early distinction of this institution. They came from widely distant places; they had been trained by widely different methods; they had widely different intellectual aptitudes; but their diversities were unified by their devotion to the university in which they were enlisted, and by their desire to promote its excellence. This spirit has continued till the present time, and has descended to those who have from time to time joined the ranks, so that it may be emphatically said that the union of the Faculty has been the key to its influence.

The first requisite of success in any institution is a staff of eminent teachers, each of whom gives freely the best of which he is capable. The best varies with the individual; one may be an admirable lecturer or teacher; another a profound thinker; a third a keen investigator; another a skilful experimenter; the next, a man of great acquisitions; one may excel by his industry, another by his enthusiasm, another by his learning, another by his genius; but every member of a faculty should be distinguished by some uncommon attainments and by some special aptitudes, while the faculty as a

whole should be united and coöperative. Each professor, according to his subject and his talents, should have his own best mode of working, adjusted to and controlled by the exigencies of the institution with which he is associated.

The original professors, who were present when instructions began in October, 1876, were these: as the head and guide of the mathematical studies, Professor Sylvester, of Cambridge, Woolwich and London, one of the foremost of European mathematicians; as the leader of classical studies, Professor Gildersleeve, then of the University of Virginia; as director of the Chemical Laboratory and of instruction in chemistry, Professor Remsen, then of Williams College; to organize the work in Biology (a department then scarcely known in American institutions, but here regarded as of great importance with reference to the future school of medicine), Professor Martin, then of Cambridge (Eng.), a pupil of Professor Michael Foster and of Professor Huxley; as chief in the department of Physics, Professor Rowland, then holding a subordinate position in the Rensselaer Polytechnic Institute, whose ability in this department had been shown by the contributions he had made to scientific journals; and as collegiate professor, or guide to the undergraduate students, Professor Charles D. Morris, once an Oxford fellow, and then of the University of the City of New York.

The names of the professors in the Faculty of Philosophy, from 1876 to 1890, are as follows, arranged in the order of their appointment:

1876.....Basil L. Gildersleeve, LL. D.....*Greek.*
1876.....J. J. Sylvester, LL. D.....*Mathematics.*
1876.....Ira Remsen, Ph. D.....*Chemistry.*
1876.....Henry A. Rowland, Ph. D.....*Physics.*
1876.....H. Newell Martin, Sc. D.....*Biology.*
1876.....Charles D. Morris, A. M.....*Classics, (Collegiate).*
1883.....Paul Haupt, Ph. D.....*Semitic Languages.*
1884.....G. Stanley Hall, LL. D.....*Psychology.*
1884.....William H. Welch, M. D.....*Pathology.*
1884.....Simon Newcomb, LL. D.....*Mathematics and Astronomy.*

1886.....John H. Wright, A. M.....*Classical Philology.*
1889.....Edward H. Griffin, LL. D.....*History of Philosophy.*
1891.....Herbert B. Adams, Ph. D.....*Amer. and Inst. History.*
1891.....William K. Brooks, Ph. D.....*Animal Morphology.*

The persons below named have been appointed associate professors,—and their names are arranged in the order of their appointment:

1883.....Herbert B. Adams, Ph. D.....*History.*
1883.....Maurice Bloomfield, Ph. D.....*Sanskrit and Comp. Philology.*
1883.....William K. Brooks, Ph. D.....*Animal Morphology.*
1883.....Thomas Craig, Ph. D.....*Mathematics.*
1883.....Charles S. Hastings, Ph. D.....*Physics.*
1883.....Harmon N. Morse, Ph. D.....*Chemistry.*
1883.....William E. Story, Ph. D.....*Mathematics.*
1883.....Minton Warren, Ph. D.....*Latin.*
1884.....A. Marshall Elliot, Ph. D.....*Romance Languages.*
1884.....J. Rendel Harris, A. M.....*New Testament Greek.*
1885.....George H. Emmott, A. M.....*Logic.*
1885.....C. René Gregory, Ph. D.....*New Testament Greek.*
1885.....George H. Williams, Ph. D.....*Inorganic Geology.*
1885.....Henry Wood, Ph. D.....*German.*
1887.....Richard T. Ely, Ph. D.....*Political Economy.*
1888.....William T. Councilman, M. D.....*Anatomy.*
1888.....William H. Howell, Ph. D.....*Animal Physiology.*
1888.....Arthur L. Kimball, Ph. D.....*Physics.*
1888.....Edward H. Spieker, Ph. D.....*Greek and Latin.*
1889.....Louis Duncan, Ph. D.....*Electricity.*
1889.....Fabian Franklin, Ph. D.....*Mathematics.*

At the opening of the Johns Hopkins Hospital, the principal physicians and surgeons of that foundation were appointed professors of the University, namely, arranged in the order of their appointment:

1889.....William Osler, M. D.....*Medicine.*
1889.....Henry M. Hurd, M. D.....*Psychiatry.*
1889.....Howard A. Kelly, M. D.....*Gynecology.*
1889.....William S. Halsted, M. D.....*Surgery.*

In selecting a staff of teachers, the Trustees have endeavored to consider especially the devotion of the candidate to some

particular line of study and the certainty of his eminence in that specialty; the power to pursue independent and original investigation, and to inspire the young with enthusiasm for study and research; the willingness to coöperate in building up a new institution; and the freedom from tendencies toward ecclesiastical or sectional controversies. They announced that they would not be governed by denominational or geographical considerations in the appointment of any teacher; but would endeavor to select the best person whose services they could secure in the position to be filled,—irrespective of the place where he was born, or the college in which he was trained, or the religious body with which he might be enrolled.

It is obvious that in addition to the qualifications above mentioned, regard has always been paid to those personal characteristics which cannot be rigorously defined, but which cannot be overlooked if the ethical as well as the intellectual character of a professorial station is considered, and if the social relations of a teacher to his colleagues, his pupils, and their friends, are to be harmoniously maintained. The professor in a university teaches as much by his example as by his precepts.

Besides the resident professors, it has been the policy of the University to enlist from time to time the services of distinguished scholars as lecturers on those subjects to which their studies have been particularly directed. During the first few years the number of such lecturers was larger, and the duration of their visits was longer than it has been recently. When the faculty was small, the need of the occasional lecturer was more apparent for obvious reasons, than it has been in later days. Still the University continues to invite the coöperation of non-resident professors, and the proximity of Baltimore to Washington makes it particularly easy to engage learned gentlemen from the capital to give occasional lectures upon their favorite studies. Recently a lectureship of Poetry has

been founded by Mr. and Mrs. Turnbull of Baltimore, in memory of a son who is no longer living, and an annual course may be expected from writers of distinction who are known either as poets, or as critics, or as historians of poetry. The first lecturer on this foundation will be Mr. E. C. Stedman, of New York, the second, Professor Jebb, of Cambridge (Eng.). Another lectureship has been instituted by Mr. Eugene Levering with the object of promoting the purposes of the Young Men's Christian Association. The first lecturer on this foundation was Rev. Dr. Broadus, of Louisville, Ky.

A few of those who held the position of lecturers made Baltimore their home for such prolonged periods that they could not properly be called non-resident. The following list contains the principal appointments. It might be much enlarged by naming those persons who have lectured at the request of one department of the University and not of the Trustees, and by naming some who gave but single lectures.

1876.....Simon Newcomb.....*Astronomy.*
1876.....Léonce Rabillon.....*French.*
1877.....John S. Billings.....*Medical History, etc.*
1877.....Francis J. Child.....*English Literature.*
1877.....Thomas M. Cooley.....*Law.*
1877.....Julius E. Hilgard .....*Geodetic Surveys.*
1877.....James Russell Lowell.....*Romance Literature.*
1877.....John W. Mallet.....*Technological Chemistry.*
1877.....Francis A. Walker.....*Political Economy.*
1877.....William D. Whitney.....*Comparative Philology.*
1878.....William F. Allen.....*History.*
1878.....William James.....*Psychology.*
1878.....George S. Morris.....*History of Philosophy.*
1879.....J. Lewis Diman.....*History.*
1879.....H. Von Holst.....*History.*
1879.....William G. Farlow.....*Botany.*
1879.....J. Willard Gibbs.....*Theoretical Mechanics.*
1879.....Sidney Lanier.....*English Literature.*
1879.....Charles S. Peirce.....*Logic.*
1880.....John Trowbridge.....*Physics.*
1881.....A. Graham Bell.....*Phonology.*

1881.....S. P. Langley.....*Physics.*
1881.....John McCrady.....*Biology.*
1881.....James Bryce.....*Political Science.*
1881.....Edward A. Freeman.....*History.*
1881.....John J. Knox.....*Banking.*
1882.....Arthur Cayley.....*Mathematics.*
1882.....William W. Goodwin.....*Plato.*
1882.....G. Stanley Hall.....*Psychology.*
1882.....Richard M. Venable.....*Constitutional Law.*
1882.....James A. Harrison.....*Anglo-Saxon.*
1882.....J. Rendel Harris.....*New Testament Greek.*
1883.....George W. Cable.....*English Literature.*
1883.....William W. Story.....*Michel Angelo.*
1883.....Hiram Corson.....*English Literature.*
1883.....F. Seymour Haden.....*Etchers and Etching.*
1883.....John S. Billings.....*Municipal Hygiene.*
1883.....James Bryce.....*Roman Law.*
1883.....H. Von Holst.....*Political Science.*
1884.....William Trelease.....*Botany.*
1884.....J. Thacher Clarke.....*Explorations in Assos.*
1884.....Josiah Royce.....*Philosophy.*
1884.....William J. Stillman.....*Archæology.*
1884.....Charles Waldstein.....*Archæology.*
1884.....Sir William Thomson.....*Molecular Dynamics.*
1885.....A. Melville Bell.....*Phonetics, etc.*
1885.....Edmund Gosse.....*English Literature.*
1885.....Eugene Schuyler.....*U. S. Diplomacy.*
1885.....Justin Winsor.....*Shakespeare.*
1885.....Frederick Wedmore.....*Modern Art.*
1886.....Isaac H. Hall.....*New Testament.*
1886.....William Hayes Ward.....*Assyria.*
1886.....William Libbey, Jr.....*Alaska.*
1886.....Alfred R. Wallace.....*Island Life.*
1886.....Mandell Creighton.....*Rise of European Universities.*
1887.....Arthur L. Frothingham, Jr.....*Babylonian and Assyrian Art.*
1887.....Rodolfo Lanciani.....*Roman Archæology.*
1888.....Andrew D. White.....*The French Revolution.*
1890.....John A. Broadus.....*Origin of Christianity.*

The number of associates, readers, and assistants has been very large, most such appointments having been made for brief periods among young men of promise looking forward to preferment in this institution or elsewhere.

Distinction between Collegiate and University Courses.

From the opening of the University until now a sharp distinction has been made between the methods of university instruction and those of collegiate instruction. In the third annual report, September 1, 1878, the views which had been announced at the opening of the University are expanded and are illustrated by the action of the Trustees and the Faculty during the first two years.

The terms university and college have been so frequently interchanged in this country that their significance is liable to be confounded; and it may be worth while, once more at least, to call attention to the distinction which is recognized among us. By the college is understood a place for the orderly training of youth in those elements of learning which should underlie all liberal and professional culture. The ordinary conclusion of a college course is the Bachelor's degree. Usually, but not necessarily, the college provides for the ecclesiastical and religious as well as the intellectual training of its scholars. Its scheme admits but little choice. Frequent daily drill in languages, mathematics, and science, with compulsory attendance and frequent formal examinations, is the discipline to which each student is submitted. This work is simple, methodical, and comparatively inexpensive. It is understood and appreciated in every part of this country.

In the university more advanced and special instruction is given to those who have already received a college training or its equivalent, and who now desire to concentrate their attention upon special departments of learning and research. Libraries, laboratories, and apparatus require to be liberally provided and maintained. The holders of professorial chairs must be expected and encouraged to advance by positive researches the sciences to which they are devoted; and arrangements must be made in some way to publish and bring before the criticism of the world the results of such investigations. Primarily, instruction is the duty of the professor in a uni-

versity as it is in a college; but university students should be so mature and so well trained as to exact from their teachers the most advanced instruction, and even to quicken and inspire by their appreciative responses the new investigations which their professors undertake. Such work is costly and complex; it varies with time, place, and teacher; it is always somewhat remote from popular sympathy, and liable to be depreciated by the ignorant and thoughtless. But it is by the influence of universities, with their comprehensive libraries, their costly instruments, their stimulating associations and helpful criticisms, and especially their great professors, indifferent to popular applause, superior to authoritative dicta, devoted to the discovery and revelation of truth, that knowledge has been promoted, and society released from the fetters of superstition and the trammels of ignorance, ever since the revival of letters.

In further exposition of these views, from men of different pursuits, reference should be made to an article on Classics and Colleges, by Professor Gildersleeve (*Princeton Review*, July, 1878), lately reprinted in the author's "Essays and Studies," (Baltimore, 1890); to an address by Professor Sylvester before the University on "Mathematical Studies and University Life," (February 22, 1877); to an address by Professor Martin on the study of Biology (*Popular Science Monthly*, January, 1877); to some remarks on the study of Chemistry by Professor Remsen (*Popular Science Monthly*, April, 1877); and to an address entitled "A Plea for Pure Science" (Salem, 1883), by Professor Rowland, as a Vice-President of the American Association for the Advancement of Science. Although of a much later date, reference should also be made to an address by Professor Adams (February 22, 1889) on the work of the Johns Hopkins University, printed in the *Johns Hopkins University Circulars*, No. 71. An address by Dr. James Carey Thomas, one of the Trustees, at the tenth anniversary, in 1886, may also be consulted (*Ibid.* No. 50). Reference may also be made to the fifteen annual reports of the University and to the articles below

named, by the writer of this sketch. The Group System of College Courses in the Johns Hopkins University (*Andover Review*, June, 1886); The Benefits which Society derives from Universities: Annual Address on Commemoration Day, 1885 (*Johns Hopkins University Circulars*, No. 37); article on Universities in Lalor's *Cyclopædia of Political Science;* an address before the Phi Beta Kappa Society of Harvard University, July 1, 1886; an address at the opening of Bryn Mawr College, 1885.

Students, Courses of Studies, and Degrees.

In accordance with the plans thus formulated, the students have included those who have already taken an academic degree, and who have here engaged in advanced studies; those who have entered as candidates for the Bachelors' degree; and those who have pursued special courses without reference to degrees. The whole number of persons enrolled in these three classes during the first fourteen years (1876–1890) is fifteen hundred and seventy-one. Seven hundred and three persons have pursued undergraduate courses and nine hundred and two have followed graduate studies. Many of those who entered as undergraduates have continued as graduates, and have proceeded to the degree of Doctor of Philosophy. These students have come from nearly every State in the Union, and not a few of them have come from foreign lands. Many of those who received degrees before coming here were graduates of the principal institutions of this country. The degree of Doctor of Philosophy has been awarded after three years or more of graduate studies to one hundred and eighty-four persons, and that of Bachelor of Arts to two hundred and fifty at the end of their collegiate course.

Two degrees, and two only, have been opened to the students of this University. Believing that the manifold forms in which the baccalaurate degree is conferred are confusing the public, and that they tend to lessen the respect for academic titles, the authorities of the Johns Hopkins University determined to

bestow upon all those who complete their collegiate courses the title of Bachelor of Arts. This degree is intended to indicate that its possessor has received a liberal education, or in other words that he has completed a prolonged and systematic course of studies in which languages, mathematics, sciences, history, and philosophy have been included. The amount of time devoted to each of these various subjects varies according to individual needs and preference, but all the combinations are supposed to be equally difficult and honorable. Seven such combinations or groups of studies have been definitely arranged, and "the group system," thus introduced, combines many of the advantages of the elective system, with many of the advantages of a fixed curriculum. The undergraduate has his choice among many different lines of study, but having made this determination he is expected to follow the sequence prescribed for him by his teachers. He may follow the old classical course; or he may give decided preference to mathematics and physics; or he may select a group of studies, antecedent to the studies of a medical school; or he may pursue a scientific course in which chemistry predominates; or he may lay a foundation for the profession of law by the study of history and political science; or he may give to modern languages the preference accorded in the first group to the ancient classics. In making his selection, and indeed in prosecuting the career of an undergraduate, he has the counsel of some member of the faculty who is called his adviser. While each course has its predominant studies, each comprises in addition the study of French and German, and at least one branch of science, usually chemistry or physics, with laboratory exercises.

The degree of Doctor of Philosophy is offered to those who continue their studies in a university for three years or more after having attained the baccalaureate degree. Their attention must be given to studies which are included in the faculty of philosophy and the liberal arts, and not to the professional faculties of Law, Medicine, and Theology. Students who have graduated in other institutions of repute may offer

themselves as candidates for this degree. In addition to the requirements above mentioned, the student must show his proficiency in one principal subject and in two that are secondary, and must submit himself to rigid examinations, first written and then oral. He must also present a thesis which must gain the approval of the special committee to which it may be referred, and must subsequently be printed. All these requisitions are enforced by a faculty which is known as the Board of University Studies.

As an encouragement to the systematic prosecution of university studies, the degree of Doctor of Philosophy in this University is offered under the following conditions.

A Board of University Studies is constituted for the purpose of guiding the work of those who may become candidates for this degree. The time of study is a period of at least three years of distinctive university work in the philosophical Faculty. It is desirable that the student accepted as a candidate should reside here continuously until his final examinations are passed, and he is required to spend the last year before he is graduated in definite courses of study at this University. Before he can be accepted as a candidate, he must satisfy the examiners that he has received a good collegiate education, that he has a reading knowledge of French and German, and that he has a good command of literary expression. He must also name his principal subject of study and the two subordinate subjects.

The Board reserves the right to say in each case whether the antecedent training has been satisfactory, and, if any of the years of advanced work have been passed by the candidate away from this University, whether they may be regarded as spent in university studies under suitable guidance and favorable conditions. Such studies must have been pursued without serious distractions and under qualified teachers.

Private study, or study pursued at a distance from libraries and laboratories and other facilities, will not be considered as equivalent to university study.

In the conditions which are stated below, it will appear that there are several tests of the proficiency of the candidate, in addition to the constant observation of his instructors. A carefully prepared thesis must be presented by the candidate on a subject approved by his chief adviser, and this thesis must receive the approbation of the Board. There are private examinations of the candidate, both in his chief subject and in the subordinate subjects. If these tests are successfully passed, there is a final oral examination in the presence of the Board.

As an indication of the possible combinations which may be made by those who are studying for the degree of Doctor of Philosophy, the following schedule is presented:

Physics, Mathematics, and Chemistry; Animal Physiology, Animal Morphology, and Chemistry; Chemistry, Mineralogy, and Geology; Mathematics, Astronomy, and Physics; Sanskrit, Greek, and Latin; History, Political Economy, and International Law; Greek, Sanskrit, and Latin; French, Italian and Spanish, and German; Latin, Sanskrit, and Roman Law; Latin, Sanskrit, and German; Assyriology, Ethiopic and Arabic, and Greek; Political Economy, History, and Administration; English, German, and Old Norse; Inorganic Geology and Petrography, Mineralogy, and Chemistry; Geology and Mineralogy, Chemistry, and Physics; Romance Languages, German, and English; Latin, Greek, and Sanskrit; German, English, and Sanskrit.

While students are encouraged to proceed to academic degrees, the authorities have always borne in mind the needs of those who could not, for one reason or another, remain in the university for more than a year or two, and who might wish to prosecute their studies in a particular direction without any reference to academic honors. Such students have always been welcome, especially those who have been mature enough to know their own requirements and to follow their chosen courses, without the incentive of examinations and diplomas.

Publications, Seminaries, Societies.

The Johns Hopkins University has encouraged publication. In addition to the annual Register or Catalogue, the report of the President is annually published, and from time to time

during the year "Circulars" are printed, in which the progress of investigations, the proceedings of societies, reports of lectures, and the appearance of books and essays are recorded. Encouragement is also given by the Trustees to the publication of literary and scientific periodicals and occasionally of learned essays and books. The journals regularly issued are :

I. *American Journal of Mathematics.* S. Newcomb, Editor, and T. Craig, Associate Editor. Quarterly. 4to. Volume XIII in progress.
II. *American Chemical Journal.* I. Remsen, Editor. 8 nos. yearly. 8vo. Volume XIII in progress.
III. *American Journal of Philology.* B. L. Gildersleeve, Editor. Quarterly. 8vo. Volume XI in progress.
IV. *Studies from the Biological Laboratory.* H. N. Martin, Editor, and W. K. Brooks, Associate Editor. 8vo. Volume V in progress.
V. *Studies in Historical and Political Science.* H. B. Adams, Editor. Monthly. 8vo. Vol. IX in progress.
VI. *Contributions to Assyriology, etc.* Fr. Delitzsch and Paul Haupt, Editors. Vol. II in progress.
VII. *Johns Hopkins University Circulars.* 85 numbers issued.

Another form of intellectual activity is shown in the seminaries and scientific associations which have more or less of an official character. In the seminary, the professor engages with a small company of advanced students, in some line of investigation—the results of which, if found important, are often published. The relations of the head of a seminary to those whom he admits to this advanced work, are very close. The younger men have an opportunity of seeing the methods by which older men work. The sources of knowledge, the so-called authorities, are constantly examined. The drift of modern discussions is followed. Investigations, sometimes of a very special character, are carefully prosecuted. All this is done upon a plan, and with the incessant supervision of the director, upon whose learning, enthusiasm, and suggestiveness, the success of the seminary depends. Each such seminary among us has its own collection of books.

The associations or societies serve a different purpose. They bring together larger companies of professors and graduate

students, who hear and discuss such papers as the members may present. These papers are not connected by one thread like those which come before the seminaries. They are usually of more general interest, and they often present the results of long continued thought and investigation.

Buildings, Libraries, and Collections.

The site selected when the University was opened in the heart of Baltimore, near the corner of Howard and Monument streets, has proved so convenient, that from time to time additional property in that neighborhood has been secured and the buildings thus purchased have either been modified so as to meet the academic needs, or have given place to new and commodious edifices.

The principal buildings now in use are these:

(1). A central administration building, in which are the class-rooms for classical and oriental studies.

(2). A library building, in which are also rooms devoted especially to history and political science.

(3). A chemical laboratory well equipped for the service of more than a hundred workers.

(4). A biological laboratory, with excellent arrangements for physiological and morphological investigations.

(5). A physical laboratory—the latest and best of the laboratories—with excellent accommodations for physical research and instruction.

(6). A gymnasium for bodily exercise.

(7). Two dwelling houses, appropriated to the collections in mineralogy and geology until a suitable museum and laboratory can be constructed.

(8). Levering Hall, constructed for the uses of the Young Men's Christian Association, and containing a large hall which may be used for general purpeses.

(9). Smaller buildings used for the smaller classes.

(10). An official residence of the President, which came to the University as a part of the bequest of the late John W. McCoy, Esq.

The library of the university numbers nearly 45,000 well selected volumes,—including "the McCoy library" not yet incorporated with the other books, and numbering 8,000 volumes. Not far from 1,000 periodicals are received, from every part of the civilized world. Quite near to the university is the Library of the Peabody Institute, a large, well-chosen, well-arranged, and well-catalogued collection. It numbers more than one hundred thousand volumes.

The university has extensive collections of minerals and fossils, a select zoölogical and botanical museum, a valuable collection of ancient coins, a remarkable collection of Egyptian antiquities (formed by Col. Mendes I. Cohen, of Baltimore), a bureau of maps and charts, a number of noteworthy autographs and literary manuscripts of modern date, and a large amount of the latest and best scientific apparatus—astronomical, physical, chemical, biological, photographical, and petrographical.

Statistics.

Summary of Attendance, 1876–90.

Years.	Teachers.	Total Enrolled Students.	Graduates.	Matriculates.	Special.	Degrees Conferred.	
						A. B.	Ph. D.
1876–77.....	29	89	54	12	23	—	—
1877–78.....	34	104	58	24	22	—	4
1878–79.....	25	123	63	25	35	3	6
1879–80.....	33	159	79	32	48	16	5
1880–81.....	39	176	102	37	37	12	9
1881–82.....	43	175	99	45	31	15	9
1882–83.....	41	204	125	49	30	10	6
1883–84.....	49	249	159	53	37	23	15
1884–85.....	52	290	174	69	47	9	13
1885–86.....	49	314	184	96	34	31	17
1886–87.....	51	378	228	108	42	24	20
1887–88.....	57	420	231	127	62	34	27
1888–89.....	55	394	216	129	49	36	20
1889–90.....	58	404	229	130	45	37	33
1890–91.....	64	427	231	142	54	—	—

Trustees.

It should never be forgotten in considering the history of such a foundation that the ultimate responsibility for its organization and government rests upon the Board of Trustees. If they are enlightened and high-minded men, devoted to the advancement of education, their influence will be felt in every department of instruction. The Johns Hopkins University has been exceptionally favored in this respect. Mr. Hopkins chose the original body with the same sagacity that he showed in all his career as a business man; and as, one by one, vacancies have occurred, men of the same type have been selected, by coöptation, for these important positions. The names of the Trustees from the beginning are as follows:

*1867.....George William Brown.
*1867.....Galloway Cheston.
1867.....George W. Dobbin.
*1867.....John Fonerden.
*1867.....John W. Garrett.
1867.....Charles J. M. Gwinn.
1867.....Lewis N. Hopkins.
*1867.....William Hopkins.
1867.....Reverdy Johnson, Jr.
1867.....Francis T. King.
*1867.....Thomas M. Smith.
1867..... .....Francis White.
1870.....James Carey Thomas.
1878.....C. Morton Stewart.
1881.....Joseph P. Elliott.
1881.....J. Hall Pleasants.
1881.....Alan P. Smith.
1886.....Robert Garrett.
1891.....James L. McLane.

* Deceased.

Notes supplementary to the Johns Hopkins University
Studies in Historical and Political Science, 1891, No. 1.

UNIVERSITY EXTENSION AND THE UNIVERSITY OF THE FUTURE.

THE SUBSTANCE OF ADDRESSES DELIVERED BEFORE THE JOHNS HOPKINS AND OTHER UNIVERSITY AUDIENCES.

BY RICHARD G. MOULTON, A. M.,
Of Cambridge University, England.

I am requested to furnish information with reference to the University Extension Movement in England. It will be desirable that side by side with the facts I should put the ideas of the movement, for, in matters like these, the ideas are the inspiration of the work; the ideas, moreover, are the same for all, whereas the detailed methods must vary with different localities. The idea of the movement is its soul; the practical working is no more than the body. But body and soul alike are subject to growth, and so it has been in the present case. The English University Extension Movement was in no sense a carefully planned scheme, put forward as a feat of institutional symmetry; it was the product of a simple purpose pursued through many years, amid varying external conditions, in which each modification was suggested by circumstances and tested by experience. And with the complexity of our operations our animating ideas have been striking deeper and growing bolder. Speaking then up to date, I would define the root idea of 'University Extension' in the following simple formula: University Education for the Whole Nation organized on a basis of Itinerant Teachers.

But every clause in this defining formula will need explanation and defence.

The term 'University' Extension has no doubt grown up from the circumstance that the movement in England was started and directed by the universities, which have controlled its operations by precisely the same machinery by which they manage every other department of university business. I do not know that this is an essential feature of the movement. The London branch

presents an example of a flourishing organization directed by a committee formed for the purpose, though this committee at present acts in concert with three universities. I can conceive the new type of education managed apart from any university superintendence; only I should look upon such severance as a far more serious evil for the universities than for the popular movement.

But I use the term 'university education' for the further purpose of defining the type of instruction offered. It is thus distinguished from school education, being moulded to meet the wants of adults. It is distinguished from the technical training necessary for the higher handicrafts or for the learned professions. It is no doubt to the busy classes that the movement addresses itself, but we make no secret of the fact that our education will not help them in their business, except that, the mind not being built in water-tight compartments, it is impossible to stimulate one set of faculties without the stimulus reacting upon all the rest. The education that is properly associated with universities is not to be regarded as leading up to anything beyond, but is an end in itself, and applies to life as a whole. And the foundation for university extension is a change, subtle but clear, that may be seen to be coming over the attitude of the public mind to higher education, varying in intensity in different localities, but capable of being encouraged where it is least perceptible,—a change by which education is ceasing to be regarded as a thing proper to particular classes of society or particular periods of life, and is coming to be recognized as one of the permanent interests of life, side by side with such universal interests as religion and politics. For persons of leisure and means such growing demand can be met by increased activity of the universities; University Extension is to be the university of the busy.

My definition puts the hope of extending university education in this sense to the whole nation without exception. I am aware that to some minds such indiscriminate extension will seem like an educational communism, on a par with benevolent schemes for redistributing the wealth of society so as to give everybody a comfortable income all round. But it surely ought not to be necessary to explain that in proposing a universal system of

education we are not meaning that what each individual draws from the system will be the same in all cases. In this as in every other public benefit that which each person draws from it must depend upon that which he brings to it. University Extension may be conceived as a stream flowing from the high ground of universities through the length and breadth of the country; from this stream each individual helps himself according to his means and his needs; one takes but a cupful, another uses a bucket, a third claims to have a cistern to himself: every one suits his own capacity, while our duty is to see that the stream is pure and that it is kept running.

The truth is that the wide-reaching purpose of University Extension will seem visionary or practicable according to the conception formed of education, as to what in education is essential and what accidental. If I am asked whether I think of shop-assistants, porters, factory-hands, miners, dock or agricultural laborers, women with families and constant home duties, as classes of people who can be turned into economists, physicists, literary critics, art connoisseurs,—I admit that I have no such idea. But I do believe, or rather, from my experience in England I know, that all such classes can be *interested* in economic, scientific, literary and artistic questions. And I say boldly that to interest in intellectual pursuits is the essential of education, in comparison with which all other educational purposes must be called secondary. I do not consider that a child has been taught to read unless he has been made to like reading; I find it difficult to think of a man as having received a classical education if the man, however scholarly, leaves college with no interest in classical literature such as will lead him to go on reading for himself. In education the interest is the life. If a system of instruction gives discipline, method, and even originating power, without rousing a lasting love for the subject studied, the whole process is but a mental galvanism, generating a delusive activity that ceases when the connection between instructor and pupil is broken off. But if a teacher makes it his first business to stir up an interest in the matter of study, the education becomes self-continuing when teacher and pupil have parted, and the subject becomes its own educator. If then it be conceded that the

essence of education is to interest, does it not seem a soberly practical purpose that we should open up to the whole nation without exception an interest in intellectual pursuits?

I take my stand on the broad moral ground that every human being, from the highest to the lowest, has two sides to his life—his work and his leisure. To be without work in life is selfishness and sloth. But if a man or woman is so entangled in routine duties as never to command leisure, we have a right to say to such persons that they are leading an immoral life. Such an individual has no claim to the title of a working man, he is a slave. It may be cruel circumstances that have thus absorbed him in business, but that does not alter the fact: slavery was a misfortune rather than a fault to those who suffered it, but in any case to be content with slavery is a crime. Once get society to recognize the duty of leisure, and there is immediately a scope for such institutions as University Extension that exist for the purpose of giving intellectual interests for such leisure time. The movement is thus one of the greatest movements for the 'raising of the masses.' With a large section of the people there is, at the present moment, no conception of 'rising' in life, except that of rising out of one social rank into another. This last is of course a perfectly legitimate ambition, but it is outside the present discussion: University Extension knows nothing of social distinctions. It has to do with a far more important mode of 'rising' in life,—that of rising in the rank to which a man happens to belong at the moment, whether it be the rank in which he started or any other. There is a saying that all men are equal after dinner: and it is true that, while in the material wealth we seek in our working hours equality is a chimera, yet in the intellectual pursuits that belong to leisure there is no bar to the equality of all, except the difference of individual capacity and desire. Macaulay tells of the Dutch farmers who worked in the fields all day, and at night read the Georgics in the original. Scotch and American universities are largely attended by students who have had to engage in menial duties all the summer in order to gain funds for their high education during the winter. And every University Extension lecturer, highly trained specialist as he is, will testify how his work has continually brought him

into contact with persons of the humblest social condition whom a moment's conversation has made him recognize as his intellectual equals. No one has any difficulty in understanding that in religious intercourse and experience all classes stand upon an equality; and I have spoken of the foundation for the University Extension movement as being the growing recognition of education as a permanent human interest akin to religion. The experience of a few years has sufficiently demonstrated the possibility of arousing such interest: to make it universal is no more than a practical question of time, money and methods.

But no doubt when we come to *modus operandi* the main difficulty of the movement is the diversity of the classes it seeks to approach—diversity in individual capacity, in leisure, means, and previous training. Opposite policies have been urged upon us. Some have said: Whatever you do, you must never lower the standard; let the Extension movement present outside the universities precisely the same education as the universities themselves are giving, however long you may have to wait for its acceptance. On the other hand, it has been urged: You must go first where you are most needed; be content with a makeshift education until the people are ready for something better. The movement has accepted neither of these policies, but has made a distinction between two elements of university training—method and curriculum. So far as method is concerned we have considered that we are bound to be not less thorough, but more thorough, if possible, than the universities themselves, in proportion as our clients work under peculiar difficulties. But in the matter of curriculum we have felt it our first duty to be elastic, and to offer little or much as may in each case be desired. Accordingly, we have elaborated an educational unit—the three months' course of instruction in a single subject: this unit course we have used all the resources we could command for making as thorough in method as possible; where more than this is desired, we arrange that more in a combination or series of such unit courses. The instruction can thus be taken by retail or wholesale: but in all cases it must be administered on the same rigorous method.

The key to the whole system is thus the unit course of three months' instruction in a single subject. The method of such a

course is conveyed by the technical terms lecture, syllabus, exercises, class. The lectures are addressed to audiences as miscellaneous as the congregation of a church, or the people in a street car; and it is the duty of the teacher to attract such miscellaneous audiences, as well as to hold and instruct them. Those who do nothing more than simply attend the lectures will at least have gained the education of continuous interest; it is something to have one's attention kept upon the same subject for three months together. But it may be assumed that in every such audience there will be a nucleus of students, by which term we simply mean persons willing to do some work between one lecture and another. The lectures are delivered no oftener than once a week; for the idea is not that the lectures convey the actual instruction —great part of which is better obtained from books, but the office of the lecture is to throw into prominence the salient points of the study, and rouse the hearers to read for themselves. The course of instruction is laid down in the syllabus—a document of perhaps thirty or forty pages, sold for a trifling sum; by referring for details to the pages of books this pamphlet can be made to serve as a text-book for the whole course, making the teacher independent in his order of exposition of any other text-book. The syllabus assists the general audience in following the lectures without the distraction of taking notes; and guides the reading and thinking of the students during the week. The syllabus contains a set of 'exercises' on each lecture. These exercises, unlike examination questions or 'quizzes,' are not tests of memory, but are intended to train the student to work for himself; they are thus to be done under the freest conditions—at home, with full leisure, and all possible access to books, notes or help from other persons. The written answers are sent to the lecturer for marginal comment, and returned by him at the 'class.' This class is a second meeting for students and others, at which no formal lecture is given, but there is free talk on points suggested to the teacher by the exercises he has received: the usual experience is that it is more interesting than the lecture. This weekly routine of lecture, syllabus-reading, exercise and class goes on for a period of twelve weeks. There is then an 'examination' in the work of the course held for students who desire to take it. Certificates are given by the

university, but it is an important arrangement that these certificates are awarded *jointly* on the result of the weekly exercises and the final examination.

The subjects treated have been determined by the demand. Literature stands at the head in popularity, history with economy is but little behind. All the physical sciences have been freely asked for. Art constitutes a department of work; but it is art-appreciation, not art-production; the movement has no function to train artists, but to make audiences and visitors to art-galleries more intelligent. It will be observed that the great study known as 'Classics' is not mentioned in this list. But it is an instructive fact that a considerable number of the courses in literature have been on subjects of Greek and Latin literature treated in English, and some of these have been at once the most successful in numbers and the most technical in treatment. I am not without hope that our English University Extension may react upon our English universities, and correct the vicious conception of classical studies which gives to the great mass of university men a more or less scholarly hold upon ancient languages without any interest whatever in ancient literatures.

This university extension method claims to be an advance on existing systems partly because under no circumstances does it ever give lectures unaccompanied by a regular plan of reading and exercises for students. These exercises moreover are designed, not for mental drill, but for stimulus to original work. The association of students with a general audience is a gain to both parties. Many persons follow regularly the instruction of the class who have not participated in the exercises. Moreover, the students, by their connection with the popular audience, are saved from the academic bias which is the besetting sin of teachers: more human interest is drawn into the study. The same effect follows from the miscellaneous character of the students who contribute exercises. High university graduates, experts in special pursuits, deeply cultured individuals who have never before had any field in which to exhibit the fruits of their culture, as well as persons whose spelling and writing would pass muster nowhere else, or casual visitors from the world of business, or young men and women fresh from school, or even children

writing in round text,—all these classes may be represented in a single week's work; and the papers sent in will vary in elaborateness from a scrawl on a post-card to a magazine article or treatise. I have received an exercise of such a character that the student considerately furnished me with an index; I remember one longer still, but as this hailed from a lunatic asylum I will quote it only for illustrating the diversity of the spheres reached by the movement. Study participated in by such diverse classes cannot but have an all-roundness which is to teachers and students one of the main attractions of the movement.

But we shall be expected to judge our system by results: and, so far as the unit courses are concerned, we have every reason to be satisfied. Very few persons fail in our final examinations, and yet examiners report that the standard in university extension is substantially the same as that in the universities—our pass students being on a par with pass men in the universities, our students of 'distinction' reaching the standard of honors schools. Personally I attach high importance to results which can never be expressed in statistics. We are in a position to assert that a successful course perceptibly influences the *tone* of a locality for the period it lasts: librarians volunteer reports of an entirely changed demand for books, and we have even assurances that the character of conversation at 'five o'clock teas' has undergone marked alteration. I may be permitted an anecdote illustrating the impression made upon the universities themselves. I once heard a brilliant university lecturer, who had had occasional experience of extension teaching, describe a course of investigation which had interested him. With an eye to business I asked him if he would not give it in an extension course. He became grave. "Well, no," he replied, "I have not thought it out sufficiently for that;" and when he saw my look of surprise he added, "You know, anything goes down in college; but when I have to face your mature classes I must know my ground well." I believe the impression thus suggested is not uncommon amongst experts who really know the movement.

Our results are much less satisfactory when we turn to the other side of our system, and enquire as to curriculum. It must be admitted that the larger part of our local centres can only

take unit courses; there may be often a considerable interval between one course and another; or where courses are taken regularly the necessity of meeting popular interest involves a distracting variety of subjects; while an appreciable portion of our energies have to be taken up with preliminary half-courses, rather intended to illustrate the working of the movement than as possessing any high educational value. The most important advance from the unit course is the Affiliation system of Cambridge university. By this a town that becomes regularly affiliated, has arranged for it a series of unit courses, put together upon proper sequence of educational topics, and covering some three or four years: students satisfying the lecturers and examiners in this extended course are recognized as 'Students affiliated' (S. A.), and can at any time enter the university with the status of second year's men,—the local work being accepted in place of one year's residence and study. Apart from this, the steps in our educational ladder other than the first are still in the stage of prophecy. But it is universally recognized that this drawback is a matter solely of funds: once let the movement command endowment and the localities will certainly demand the wider curriculum that the universities are only too anxious to supply.

The third point in our definition was that the movement was to be organized on a basis of itinerant teachers. This differentiates University Extension from local colleges, from correspondence teaching, and from the systems of which Chautauqua is the type. The chief function of a university is to teach, and University Extension must stand or fall with its teachers. It may or may not be desirable on other grounds to multiply universities; but there is no necessity for it on grounds of popular education, the itinerancy being a sufficient means of bringing any university into touch with the people as a whole. And the adoption of such a system seems to be a natural step in the evolution of universities. In the middle ages the whole body of those who sought a liberal education were to be found crowded into the limits of university towns, where alone were teachers to listen to and manuscripts to copy: the population of such university centres then numbered hundreds where to-day it numbers tens. The first university

extension was the invention of printing, which sent the books itinerating through the country, and reduced to a fraction the actual attendance at the university, while it vastly increased the circle of the educated. The time has now come to send teachers to follow the books: the ideas of the university being circulated through the country as a whole, while residence at a university is reserved as the apex only of the university system.

An itinerancy implies central and local management, and travelling lecturers who connect the two. The central management is a university, or its equivalent; this is responsible for the educational side of the movement, and negotiates for the supply of its courses of instruction at a fixed price per course.[1] The local management may be in the hands of a committee formed for the purpose, or of some local institution—such as a scientific or literary club or institute—which may care to connect itself with the universities. On the local management devolves the raising funds for the university fee, and for local expenses, as well as the duty of putting the advantages of the course offered before the local community. The widest diversity of practice prevails in reference to modes of raising funds. A considerable part of the cost will be met by the tickets of those attending the lectures, the prices of which I have known to vary from a shilling to a guinea for the unit course, while admission to single lectures has varied from a penny to half a crown. But all experience goes to show that only a part of this cost can be met in this way; individual courses may bring in a handsome profit, but taking account over various terms and various districts, we find that not more than two-thirds of the total cost will be covered by ticket money. And even this is estimated on the assumption that no more than the unit course is aimed at: while even for this the choice of subjects, and the chance of continuity of subject from term to term are seriously limited by the consideration of meeting cost as far as possible from fees. University Extension is a system of higher education, and higher education has no market value, but needs the help of endowment. But the present age is no way behind past ages in the number of

[1] The Cambridge fee is £45 per course of three months.

generous citizens it exhibits as ready to help good causes. The millionaire who will take up University Extension will leave a greater mark on the history of his country than even the pious founder of university scholarships and chairs. And even if individuals fail us, we have the common purse of the public or the nation to fall back upon.

The itinerant lecturers, not less than the university and the local management, have responsibility for the progress of the cause. An extension lecturer must be something more than a good teacher, something more even than an attractive lecturer: he must be imbued with the ideas of the movement, and ever on the watch for opportunities of putting them forward. It is only the lecturer who can maintain in audiences the feeling that they are not simply receiving entertainment or instruction which they have paid for, but that they are taking part in a public work, and are responsible for giving their locality a worthy place in a national scheme of university education. The lecturer again must mediate between the local and the central management, always ready to assist local committees with suggestions from the experience of other places, and equally attentive to bringing the special wants of different centres before the university authorities. The movement is essentially a teaching movement, and it is to the body of teachers I look for the discovery of the further steps in the development of popular education. For such a purpose lecturers and directors alike must be imbued with the missionary spirit. For University Extension is a missionary university, not content with supplying culture, but seeking to stimulate the demand for it. This is just the point in which education in the past has shown badly in comparison with religion or politics. When a man is touched with religious ideas he seeks to make converts, when he has views on political questions he agitates to make his views prevail: culture on the other hand has been only too often cherished as a badge of exclusiveness, instead of the very consciousness of superior education being felt as a responsibility which could only be satisfied by efforts to educate others. To infuse a missionary spirit into culture is not the least purpose of University Extension.

I cannot resist the temptation to carry forward this thought from the present into the future. In University Extension so

described may we not see a germ for the University of the Future? I have made the foundation of our movement the growing conception of education as a permanent interest of adult life side by side with religion and politics. The change is at best only beginning; it tasks the imagination to conceive all it will imply when it is complete. To me it appears that this expanding view of education is the third of the three great waves of change the succession of which has made up our modern history. There was a time when religion itself was identified with a particular class, the clergy alone thinking out what the rest of the nation simply accepted; then came the series of revolutions popularly summed up as the Reformation, by which the whole adult nation claimed to think for itself in matters of religion, and the special profession of the clergy became no more than a single element in the religious life of the nation. Again, there has been in the past a distinct governing class, to which the rest of society submitted; until a series of political revolutions lifted the whole adult population into self-government, using the services of political experts, but making public progress the interest of all. Before the more quiet changes of the present age the conception of an isolated learned class is giving way before the ideal of a national culture, in which universities will still be centres for educational experts, while University Extension offers liberal education to all, until educationally the whole adult population will be just as much within the university as politically the adult population is within the constitution. It would appear then that the university of such a future would be by no means a repetition of existing types, such as Oxford or Cambridge, Harvard or Johns Hopkins. These institutions would exist and be more flourishing than ever, but they would all be merged in a wider 'University of England,' or 'University of America'; and, just as the state means the whole nation acting in its political capacity through municipal or national institutions, so the university would mean the whole adult nation acting in its educational capacity through whatever institutions might be found desirable. Such a university would never be chartered; no building could ever house it; no royal personage or president of the United States would ever be asked to inaugurate it; the very attempt to found it would imply mis-

conception of its essential character. It would be no more than a floating aggregation of voluntary associations; like the companies of which a nation's commerce is made up such associations would not be organized, but would simply tend to coöperate because of their common object. Each association would have its local and its central side, formed for the purpose of mediating between the wants of a locality and the educational supply offered by universities or similar central institutions. No doubt such a scheme is widely different from the ideal education of European countries, so highly organized from above that the minister of education can look at his watch and know at any moment all that is being done throughout the country. On the contrary the genius of the Anglo-Saxon race leans towards self-help; it has been the mission of the race in the past to develop self-government in religion and politics, it remains to crown this work with the application of the voluntary system to liberal education.

In indulging this piece of speculation I have had a practical purpose before me. If what I have described be a reasonable forecast for the University of the Future, does it not follow that University Extension, as the germ of it, presents a field for the very highest academic ambition? To my mind it appears that existing types of university have reached a point where further development in the same direction would mean decline. In English universities the ideal is 'scholarship.' Scholarship is a good thing, and we produce it. But the system which turns out a few good scholars every year passes over the heads of the great mass of university students without having awakened them to any intellectual life; the universities are scholarship-factories producing good articles but with a terrible waste of raw material. The other main type of university enthrones 'research' as its summum bonum. Possibly research is as good a purpose as a man can set before him, but it is not the sole aim in life. And when one contemplates the band of recruits added each year to the army of investigators, and the choice of ever minuter fields—not to say lanes and alleys—of research, one is led to doubt whether research is not one of the disintegrating forces of society, and whether ever increasing specialisation must not mean a perpetual narrowing of human sympathies in the intellectual leaders

of mankind. Both types of university appear to me to present the phenomena of a country suffering from the effects of over-production, where the energies of workers had been concentrated upon adding to the sum of wealth, and all too little attention had been given to the distribution of that wealth through the different ranks of the community. Just at this point the University Extension movement appears to recall academic energy from production to distribution; suggesting that devotion to physics, economics, art, can be just as truly shown by raising new classes of the people to an interest in physical and economic and æsthetic pursuits, as by adding to the discoveries of science, or increasing the mass of art products. To the young graduate, conscious that he has fairly mastered the teaching of the past, and that he has within him powers to make advances, I would suggest the question whether, even for the highest powers, there is any worthier field than to work through University Extension towards the University of the Future.

V-VI

The Communes of Lombardy from the VI. to the X. Century

JOHNS HOPKINS UNIVERSITY STUDIES
IN
HISTORICAL AND POLITICAL SCIENCE
HERBERT B. ADAMS, Editor

History is past Politics and Politics present History.—*Freeman*

NINTH SERIES

V-VI

The Communes of Lombardy from the VI. to the X. Century

AN INVESTIGATION OF THE CAUSES WHICH LED TO THE DEVELOPMENT OF MUNICIPAL UNITY AMONG THE LOMBARD COMMUNES

BY WILLIAM KLAPP WILLIAMS, PH. D.
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" Est error spretus, quo Langobarda juventus
Errabat, verum loquitur nunc pagina sensum."

RHOTARI: *Legum Prologus.*

THE COMMUNES OF LOMBARDY FROM THE VI. TO THE X. CENTURY.

PART I.

The Lombard Conquest and its Results.

Before tracing the beginnings of renewed municipal life in Northern Italy, we must consider the conditions of land and people, which first rendered possible and then fostered the spirit of local independence of which such beginnings were the natural expression. To do this we must commence our researches with the first domination of the Lombards in the country.

In detail the story of the conquest of Northern Italy by the Lombards under Alboin, in 568, hardly differs materially from that of the inroads of other barbarian tribes of the north on the fertile plains of Italy. The causes were the same. Where the distinction is to be found from other such invasions, is in the results of the Lombard occupation, and in the different methods which the Lombards adopted so as to render their power and their possessions permanent. Let us look at the character of this invading host, which sweeps like a tide, at once destroying and revivifying, over the exhausted though still fertile plains of the Po and the Adige. Are we to call it a moving people or an advancing army? Are we to call its leaders (*duces*, from *ducere* to lead), heads of clans and families, or captains and generals? Finally, is the land to be invaded, or is the land to be settled? To all these questions the only answer is to be found in the conception of the absolute union of both the kinds of functions described. A

people is moving from a home whose borders have proved too narrow for its increasing numbers; an army is conquering a new home, where plenty will take the place of want, and luxury of privation. It is not an army marching at the command of a strongly centralized power to conquer a rich neighbor, and force a defeated enemy to pay it service or tribute. It is a body which, when it has conquered as an army, will occupy as a people; when it is established as a poople, will still remain an army. The sword was not turned into the ploughshare; but the power to wield the sword had given the right to till the land, and soon the power to hold the land was to give the right to wear the sword. It was the conquest of a highly civilized agricultural people—whose very civilization had reduced them to a stage of moral weakness which rendered them totally unfit to defend themselves —by a semi-barbarous people, agricultural also, but rude, uncivilized, independent, owning no rulers but their family or military chiefs.

The conquerors took possession of the country simply as they would take possession of a larger farm than they had before owned. Their riches were only such as served for the support of men—herds, land, wine and corn. They needed cultivators for their large farm, so instead of destroying every one with fire and sword, they spared those of the weak inhabitants of the land who had survived the first onslaught, in order that they might make use of farmers to cultivate their new possessions. In most cases they did not make slaves of them, but tributaries; and after the land had been portioned evenly among the soldiers of the invading host, the original holders of the land tilled it themselves, under a system somewhat kindred to the metayer system as to-day existent in Tuscany and elsewhere, paying, according to the usual custom adopted by the northern conquerors of Italy, one-third of the produce[1] to their

[1] *Paulus Diaconus:* De Gest. Lang., Lib. II., c. 32. v. *Muratori:* Script. Rer. Ital., T. I., p. 436. The Gothic system was to take one-third of the land itself from the conquered people; the Lombards on the other hand took one-third of the produce, "*frugum.*"

new masters. The whole organization of society was on a purely military basis; the soldiers of the conquering army, although they became landed proprietors, none the less retained their character and name of soldiers. Hence when these crude forms of social life began to crystallize into the carefully marked ranks of the feudal system, the "*milites*"[1] formed the order of gentlemen, the smaller feudatories, who gave land in fief to their vassals—generally the old inhabitants—while holding their own nominally from the "*duces*," or dukes, the representatives of their former leaders in war, who held their tenure direct from the king or chief.

As the object of this paper is particularly to trace the origin and early sources of municipal life in Northern Italy, let us turn and see what were the effects on the already existing towns, of the inroads of these hordes of northern barbarians. At the outset I must state emphatically that all our sources of information as to the institutional history of this obscure period are exceedingly vague, meagre and unsatisfactory. The progress of events we can follow with more or less accuracy from the mazy writings of the early chroniclers; we can get a fair idea of the judicial and the legislative acts of the ruling powers by studying and comparing the different codes of laws that have come down to us; but in a study of the internal municipal life of these early ages, the student meets again and again with increasing discouragement, and soon finds himself almost hopelessly lost in a tangle of doubts and inferences.

In the almost total want of direct evidence, from casual mention gleaned from the writings of the chroniclers, and from occasional references in the law codes to municipal offices and regulations, enough indirect evidence must be sought, to enable us, by the aid of our powers of reasoning, if not of our imagination, to build up some history, defective though it be,

[1] With the growth of society and the increase of population, the *milites* gain added power, and become the "*catanei*," the barons of the period, or as some are pleased to call them, the "rural counts."

of municipal life, down to the time when the internal growth and importance of the cities rendered them sufficiently prominent political factors to have their deeds and their progress chronicled. Besides, if we consider the modes by which the communes slowly rose to independence, it will easily be seen that to have every step of this slow and almost secret advance chronicled and given to the world, would have been entirely contrary to the policy of the cities. These hoped to gain by the neglect of their rulers, and while clinging pertinaciously to every privilege ever legally granted, to claim new ones constantly, putting forth as their sole legal title that slippery claim of precedent and time-honored custom. In that age, books of reference to prove such claims would have been found alike inconvenient and unnecessary. All the city folks wished was to be forgotten and ignored by their superiors, as any notice vouchsafed them was sure to come only in the restraint of some assumed privilege or the curtailing of some coveted right.

Hence the principal cause of the poverty of record through all this period of slow if steady growth; and the disappointed investigator must in some measure console himself with such a reason. It may be asked, what of the various local histories of different towns, whose authors seldom fail to give highflown accounts of their native cities, even in the remotest and darkest ages of their history? To this question there is a double answer: in the first place the uttermost caution must be enjoined in using such material; not only in separating fact from baseless tradition of a much later period, but in making large allowance for the heavy strain which a strong feeling of local patriotism, or civism, puts upon the conscience of the author. In the second place it must be remembered that most of such histories, or at least of the monkish or other records from which they derive their source and most of their material, were written to the glory or under the auspices of some dominant noble family or ecclesiastical institution, to whose laudation in ages past and present the

humble author devotes all the resources of his mind, and I am afraid far too often of his imagination.

Let us now cast a glance at the exhausted civilization of the towns of Northern Italy, where the formal shell of Roman organization still remained, after the vigor and life which had produced it had long been destroyed. To describe the condition of the Roman *municipia* at the time of the Teutonic invasions is but to tell a part of the story of the fall of the Roman Empire. The municipal system, which from the names and duties of its officers would seem to represent a surprising amount of local independence in matters of administration, even a collection of small almost free republics, had lost all its strength and all its vital power by the grinding exactions of a centralized despotism, which was compelled to support its declining power by strengthening the very forces which were working its destruction, at the expense of destroying those from which it should have gained its strength. The stability of every state rests ultimately on the wealth and character of its citizens, and any government which exhausts the one and degrades the other in an effort to maintain its own unlimited power has its days numbered. Under the despotic rule of the later emperors the municipalities had lost all their power, though in theory their rights were unassailed. The *curia* could elect its magistrates as of old, and these magistrates could legislate for the *municipium*, but by a single word the imperial delegate could annul the choice of the one and the acts of the other.

The economic condition of the people amounted to little short of bankruptcy; the possession of wealth, in landed property especially, having become but a burden to be avoided, and a source of exaction rather than of satisfaction to the owner. The inequalities of burdens and of rank were great. The citizens were divided into three classes: (1) the privileged classes, (2) the Curials, (3) the common people. The first, freely speaking, were those who had in a manner succeeded in detaching themselves from the

interests of the *municipium* to which they belonged; such were the members of the Senate, including all with the indefinite title of *clarissimi*, the soldiers, the clergy, the public magistrates as distinguished from the municipal officers. The second consisted of all citizens of a town, whether natives—*municipes*—or settlers—*incolæ*—who possessed landed property of more than twenty-five *jugera*, and did not belong to any privileged class: both these classes were hereditary. The third, of all free citizens whose poverty debarred them from belonging to either of the preceding divisions. On the second of these classes, the Curials, fell all the grinding burdens of the state, the executing of municipal duties, and the exactions of the central government.

It is not necessary for me to trace here the development of that financial policy which resulted in the ruin, I may say the annihilation of this order. Suffice it to say that it formed the capital fund of the government which exhausted it, and when the source of supply was destroyed, production ceased, and with it, of course, all means of governmental support. Where the extinction of this "middle class" touches the point of our inquiry is in affording an explanation of a circumstance in the history of the Lombard subjugation of the Italian towns, which without consideration of this fact would appear almost incomprehensible. I refer to the utter passivity of the inhabitants, not only in the matter of resistance to attack, which the greater strength and courage of the invaders perhaps rendered useless, but in what is more surprising, the fact that after the easy conquest was completed, we hear nothing of the manner in which the people adapted themselves to the totally new condition of life and of government to which they were subjected. Even if we can understand hearing nothing of what the people did, at least we should expect to hear what was done with it, what it became. The story of its resistance might be short and soon forgotten, but the story of its sufferings, of its complaints, of struggle against the entire change in the order and character of its life, should be a long one.

But of this no record, hardly mention even appears. When the central government falls and the last of its legions are destroyed or have departed, there seems to be no thought of any other element in society. If the evidence of the law codes did not tell us that a Roman population existed, history would record little to indicate its presence. Not only is even the slightest trace of nationality effaced, but the merging of the old conditions of life into the new seems of too little consequence to merit even an allusion. This state of affairs, as said above, is caused by the annihilation, by the despotic power of the central government, of that middle class which in times of prosperity formed the sinews of the state. Of the other classes, the privileged class, with the exception of the clergy, fell of course with the government which supported it, and the common people possessed no individuality, no power, and hardly any rights. Such, then, was the condition of the towns at the time of the Lombard invasion, a condition of such abasement and such degradation as literally to have no history; a condition which indeed can truthfully be said to merit none.

History tells the story of every great nation on the face of the earth in three short words, growth, supremacy, decline. Vary the theme as you may in the countless histories of countless peoples; subdivide the course of its progress as you will, allowing for different local causes and different local phenomena, the true philosophy of history teaches that no real departure from this natural development is possible. But what if by the violent intervention of some new and entirely foreign force, another development and another life is given to the inanimate ashes of the old? What if some nation, fresh from the woods and fields of the childhood of its growth, come with overwhelming yet preserving strength and infuse new blood into the withered veins of its predecessor? This is the problem we now have before us. How many writers of Italian history have entitled this chapter in its development "A new Italian Nation formed"! It is not

the old glories of Rome, which had been Italy, returning; it is a new Italian nation formed. Each word tells a story of its own. It is not the old galvanized to a second life; it is the new superimposed, violently if you will, upon it. We do not hear of Athens or of Rome, of an Alexander or of a Caesar, of a city or of a man. It is an "Italian nation." It is the individualism of the independent spirit of the North, which "forms" a nation from the exhausted remains of the development of centralization of the South. The new idea of distinct nationality among races of kindred stock was already at work, even though it did not reach a formal expression till the Treaty of Verdun, more than two hundred and fifty years later.

I do not mean to imply that we must in any measure ignore the passive force and influence of the old forms on the new. The old veins receive the new blood; the new torrent, overrunning everything at first with the strength of its new life, will find again, even if it deepen, the channel of the old river: a vanquished civilization will always subdue and at the same time raise its barbarous conquerors, if they come of a stock capable of appreciating civilizing influences. In the present case this means that the men of the North brought the new ideas that were to form modern history, and let their growth be directed and assisted, while they were yet too young to stand alone, by some of the framework which had been built up by the long experience of their Southern neighbors.

To focus this thought on the immediate subject of our present study, this I think is the only and true solution of the tedious question, so much discussed by the two opposing schools of thought: whether the government of the Italian communes was purely Roman in its forms and in its conception, or purely Teutonic. The supporters of neither theory can be said to be in the right. You cannot say that the average city government was entirely Roman or entirely Teutonic, either in the laws which guided it, or in the channels

by which these laws were executed and expressed. I think much time and much learning have been spent on a discussion both fruitless and unnecessary. We cannot err if we subject the question to a consideration at once critical and impartial.

The widely differing opinions eagerly supported by different writers on this point, form a very good example of the deceiving influence of national feeling on the judgment in matters of historical criticism. For, on the one hand, we find many German writers ignoring entirely the old framework of Roman organization, and recognizing only the new Teutonic life which gave back to it the strength it had lost; on the other, a host of lesser Italian writers who magnify certain old names and forms, and mistake them for the substance, making all the new life of Italy but the return of a past, which belonged to a greatness that was dead. Many there are of this school in Italy, where you will often find to-day a commune of three hundred inhabitants, with its one or two constables wearing the imperial badge, "*Senatus Populusque Albanensis*" or "*Verulensis*," as the case may be. Truly a suggestive anachronism! It is true that in remote ages especially, when the records of history are few and uncertain—and the period we are considering in this paper can almost be called the prehistoric age of municipal institutions in Northern Italy—much can be learned and much truth inferred from the evidence of a name. But this is a species of evidence we can never be too cautious in using, as the temptation is always to infer too much rather than too little.

In the following pages I will try to sift the evidence obtainable, with the impartiality of one trammeled by the support of no particular theory; always bearing in mind, however, one fact, all-important in a study where so much depends on nomenclature, namely, to give that shade of meaning and that amount of weight to any term which it possessed in the age in which it was used, carefully distinguishing this from its use in any earlier or later age. The importance of this caution will be soon seen when we come to discuss the origin of

corporate life in the communes, where many have been misled by attaching to the words *respublica* and *civitas*, for example, so continually recurring in the old laws and charters, a meaning which was entirely foreign to the terms at the period of their use. With this warning, we will turn to a consideration of the first effects of the inroad of the northern barbarians on the cities, whose exhausted and defenseless state has already been pointed out.

One of the chief characteristics of the Teutonic tribes which overran Italy during the fifth and sixth centuries, was an innate hatred of cities, of enclosing walls and crowded habitations. Children of the field and the forest, they had their village communities and their hundreds, their common land and their allotted land, but these were small restrictions on their free life, and left an extended "air-space" for each individual and his immediate household. Homestead was not too near homestead, each man being separated from his neighbor by the extent of half the land belonging to each. The centralization of population in city life was a thing undreamed of, and an idea abhorred, alike for its novelty and for the violence it did to the as yet untrained instincts of the people. The strong, independent individualism of the Teutonic freeman rebelled against anything which would in any way limit his freedom of action: "ne pati quidem inter se junctas sedes," says Tacitus.[1] An agriculturist in his rude way, he lived on the land which supported him and his family, and feeling no further need, his untrained intelligence could form no conception of the necessities and the advantages of the social union and interdependence of a more civilized state of society; nor could he comprehend the mutual relations of the individual to the immediate community in which he lived.

He could understand his own relation to and dependence on the state as a whole; alone he could not repel the attacks of neighboring tribes, alone he could not go forth to conquer new lands or increase the number of his herds. But why he

[1] *Tacitus:* Germania, cap. xvi.

should associate with others and so limit the freedom which was his birthright, for other purposes than those of attack and defense, of electing a leader for war, or getting his allotment of land in peace, was altogether beyond the horizon of his comprehension. He was sufficient unto himself for all the purposes of his daily life; to the product of his own plough and hunting-spear he looked for the maintenance of himself and his family, and the loose organization which we may call the state existed simply so as to enable him to live in comparative peace, or gain advantage in war—perhaps the first example of the new power in state-craft which was to revolutionize the political principles of the world; the individual lived no longer simply to support the state, but the state existed solely to protect and aid the individual.

If all this be true of the Teutonic nations in general, in the earlier stages of their development, particularly true is it of the Lombards,[1] a wild tribe of the Suevic stock, whose few appearances in history, previous to their invasion of Italy, are connected only with the fiercest strife and the rudest forms of barbarism. History seems to have proved that tradition has maligned the Vandal; the Goth can boast a ruler raised at the centre of Eastern civilization and refinement; but the Lombard of the invasion can never appear as other than the rude barbarian rushing from his

[1] The Sagas say the Lombards came originally from Scandinavia. Their name is commonly derived from "Long-beard," but more probably came from words signifying "a long stretch of land." Their first appearance in history is during the first century of the Christian era, in the region of Magdeburg. All trace of them is then lost till they reappear in the fifth century on the banks of the Oder; they then go south to the river Theiss. They are in a constant state of war with the Gepidæ, a tribe nearly as fierce as themselves, which strife is supposed to have been fomented by the eastern emperors. In the year 567 the Lombards, under their king Alboin, together with the Avars, begin to move into Pannonia from Dacia and the region of the Don. Kunnemund, the king of the Gepidæ, is killed, and his conquered people merged in the race of their conquerors. In the next year, still victorious, they overrun Northern Italy.

wild northern home, and forcing on a defenseless people the laws and the customs suited to his own rugged nature and the unformed state of society in which he lived.

Such being the case, there is little cause for wonder that the invading Lombard directed his fury with particular violence against the corporate towns, whose strength was not sufficient to resist the attacks of his invading host. Like all other Teutonic tribes the Lombards were entirely unskilled in the art of attacking fortified towns; hence the only mode of siege with which they were acquainted was that of starving out the inhabitants, by cutting off all source of supply by ravaging and destroying the surrounding country. This fact, unimportant as it may seem at the first glance, materially affected the whole course of the later history of some of the Italian cities. By this means we are enabled, even at this early epoch, to divide them into two classes. First, those cities which, after a more or less short resistance, yielded to the rude tactics of the barbarians and were made subject by them, for example Milan and Pavia.[1] Second, those cities like Venice and Ravenna,[2] which, by means of a connection with the sea which the invaders could not cut off, were enabled to gain supplies by water, and so resist all efforts of the besieging host to capture them. They never fell completely under the Lombard yoke, and either retained a sort of partial autonomy or yielded allegiance to some other power. It is the cities of the former class that are the subject of this investigation.

The condition of these inland towns at the time of the invasion was, as we have seen, weak in the extreme. The defenses, where they existed, were of a character to afford

[1] Some of these cities were enabled to hold out for a considerable period. Pavia was not taken till 572.

[2] To these seaports some of the functionaries of the inland towns, especially among the clergy, were able to effect their escape. For instance, the Archbishop of Milan fled to Genoa, and the Archbishop of Aquileja to Venice.

little protection, and the bulk of the inhabitants were so enervated from a life of poverty and oppression that they were almost incapable of offering any resistance in their own defense. They were reduced to such a condition as to be only too grateful if their rough conquerors, after an easy victory, disdainfully spared their lives, and left them to occupy their dismantled dwellings.

This seems to have been the almost universal method of procedure. The Lombards did not in any sense, at first, think of occupying the conquered cities; for the reasons already given they despised, because they could not yet comprehend, the life of the civilian. They contented themselves with pulling down the walls, razing the fortifications, and destroying every mark which would make of the city anything but an aggregate of miserable dwellings. The inhabitants were for the most part spared, and left to enjoy, if the term can be used for such an existence, what the conquerors did not think worth the having. These felt the fruits of their victory to lie in the rich arable lands of the surrounding plains, and here they settled down, each in his own holding, portioned out by lot to every soldier; the town being considered but as a part of the *civitas* or district, if I may use the term, of the *dux* or overlord, from whom the several *milites*, or landholders of the surrounding territory, had their tenure, and who himself held directly from the king.

It is the very insignificance of the municipal unit at this time that makes it so difficult to determine anything accurate of its position. It existed, but little more can be said of it; indeed, even this statement might be questioned, if we make that term signify a corporate existence, as will be seen further on when we come to discuss the question of the unbroken corporate existence of the towns. In a feudal age, or in an age of incipient feudalism, obligation, either claimed from an inferior or yielded to a superior, is a good index of rank and importance. Until we find the cities fulfilling certain obligations required by a higher power, we can learn little to tell

of their condition or of their internal history. On the other hand, when we find the time come for fulfilling certain obligations, we can safely argue that the cities have acquired certain functions which put them in a position to meet the obligations which their growing importance has caused to be exacted of them. To trace these steps accurately and satisfactorily is impossible, but by the aid of collateral evidence a rough idea of the epochs at least of their progress can be gained.

For this first period, then, we see the towns reduced to the lowest depths of wretchedness and disintegration; critically speaking hardly existing, but simply holding together. In studying institutions and tracing the course of their development, we must always remember that the uninterrupted continuance of their history may depend as much on the moral force of their existence as on the more limited and defined fact of their accurate and legal recognition by others. In every society a state of fact must in time become a state of law, as wise legislation is more the recognition by law of existing conditions than the formulating of new codes. So the towns, even at the period immediately succeeding their conquest by the Lombards, though their corporate existence cannot be claimed, nevertheless cannot be said in any measure to have ceased to exist; for as collections of individuals and of dwellings they were there, with an individuality uneffaced though as yet unrecognized.

It was a period of utter stagnation, of suspension of life, but the source remained intact, from which, by the evolution of events and the progress of time, seeds were to spring that only needed external pressure to force them into a growth, slow indeed but certain, and in the end fruitful. A transition period we might call it. The theory of Roman universal domination, by relegating to the central power all the *political* functions of the municipality and leaving it only its *civic* ones, and these in later imperial times grudgingly and with an impaired independence, had left it simply an administrative

instead of a political division of the state. In the flush of triumph the rough hand of the barbarian overthrew the framework of administration, and at first failed to recognize the necessity of replacing it by any other. The passivity of the conquered inhabitants—the cause of which has already been explained—was such that a long period elapsed before they realized that to regain in some measure the position of local independence that they had lost, and to free themselves from the shackles of dependence on the rural communities in which they were placed—a dependence forced upon them by the natural development of the new state system of their Teutonic conquerors—some common effort at organization was needful, for purposes at least of self-defense. That this effort came from the town itself, from the people and not from the external power of the ruler or overlord, is the fact which first makes the history of these municipalities interesting.

There are two facts, however, which, even at this early date, begin to influence the internal history of the communes. These are the influence which the Church,[1] through its bishops, began to attain in the civil affairs of the country; and the idea beginning to gain currency that the locality where a number of individuals, however wretched in state, were collected together, would afford a safer refuge than the open country to the oppressed, the homeless and the outcast. I will briefly consider the latter first, as of less importance, though not unconnected with the former.

In the period of great confusion in all relations of property which ensued from the Lombard military system of small independent landholders and a few great overlords, with a nominal royal ownership of title, and before the feudal system was estab-

[1] The Christianity of the Lombards of the invasion was of the Arian form. Autari, who reigned from 584 to 591, married Theodolinda of Bavaria, and she first introduced orthodox Christianity. At the death of Autari she married Agiluf (591-615) duke of Turin, who was an Arian, but who pursued a mediative policy. During his reign a double ecclesiastical system, with orthodox and Arian bishops side by side, was maintained.

lished, with its iron rules in regular working order, constant inequalities of wealth and consequent changes in the relative positions of individuals were sure to ensue. In practice if not in theory, might makes right in such a state of society. The weaker goes to the wall, and the stronger gains in strength by his downfall. Besides, it was long before the roving and predatory instinct of the barbarian was moderated; and his weaker neighbor was the natural prey of the more powerful landholder, an example not unfrequently set by the king himself. Now, if the weaker party remained to brave the attack and was conquered, he was reduced to a state of villeinage or of dependence more or less complete. If on the other hand he wished to escape this change of condition, where was he to find refuge? The only safe asylum in those days of rapine and violence was that offered by the Church and its precincts. The church of the greatest importance in the district, in this early age when no walled monasteries existed, would without doubt be that situated within the limits of the nearest town. To this haven then comes the outcast, hastily collecting his family and all of his wealth of a portable character; the country loses a small landed proprietor, but the town gains a citizen, a freeman, a member of the upper class.

Of course many of the fugitives who sought asylum in the towns were as low as the great numbers of the semi-servile population, but much that was new and of a better character and intelligence, and even a large amount of property, which later gave birth to commercial and other interests, were introduced by members of the higher classes fleeing from their more powerful neighbors. Also the human instinct of seeking fellowship in misfortune probably assisted in increasing the numbers which in times of trouble flocked towards the towns as a haven of refuge and a place to seek support. To see how they were in a measure enabled to attain these results, we must now consider the first of the two facts mentioned above, that is, the power in civil affairs gained by the bishops.

When the Lombards of the conquest, in their hatred of everything which savored of the old Roman civilization, overthrew all the established offices of city government to replace them with others of barbarian name and origin, or to leave them unfilled altogether, among the time-honored officers of the Roman rule was one whose powers were everywhere recognized, even if at present it is a little difficult to define with precision his duties. I refer to the *defensor urbis*. This office came into prominence when Roman despotism found that it was overreaching itself by grinding down the defenseless *curiæ* below the margin of productiveness. The duties of the *defensor* were, as his name implies, to protect the powerless inhabitants of the cities against the exactions of the imperial ministers. He enjoyed many important privileges of jurisdiction, and these were materially increased by the legislation of Justinian; and soon the *defensor* became an important officer of the municipality.[1] What particularly concerns us is that he was the only municipal officer who was elected not by the votes of the *curia* alone, but by those of the whole people forming the *municipium*, including the bishop and his clergy. Now in the period just preceding the invasion of the barbarians, the clergy alone possessed any energy and influence; so into their hands fell the control of this new institution, and consequently all that remained of life in the municipal system.

As in city matters these conditions remained unaltered after the coming of the Lombards, what was more natural

[1] Justinian gave him the right to exercise, in reference to each city, the functions of the governor of the province, during the latter's absence; and granted him jurisdiction in all cases not involving a larger sum than 300 *aurei*. He had a certain amount of authority in criminal matters, and two apparitors were attached to his person. The *defensores* had two guarantees for their power and their independence. 1. They had the right of passing over the various degrees in the public administration, and of carrying their complaints at once before the praetorian prefect; this freed them from the jurisdiction of the provincial authorities. 2. They were elected by the general body of the inhabitants of the *municipium*.

than that the bishops should retain their moral position of defenders of the people, even if we admit that the form of the office fell with the old administration? To these considerations we may add two important facts: that the office of bishop was for a long time the only one in the election to which the people—and by this term I mean the people as a whole, not the *populus* of the old laws and charters—had any voice whatever; and that the bishop, from his spiritual position as pastor of the flock, and from his civil position as having great legal influence in the town and being probably the only man of superior intellect interested in the internal affairs of the community, was the proper and most effectual mediator between the people and their temporal rulers. Hence arose that important influence of the bishops which was to have so perceptible an effect on the subsequent development of the principles of liberty in the communes.

To appreciate properly, and to give the true value to this power in its later progress, we must remember one thing: that it did not have its origin by any seeking of power by either the Roman or the Ambrosian church as a body, in any concerted effort to extend the ecclesiastical power at the expense of the civil. It came from the spontaneous effort of the pastor, the natural and at that time the only protector of the people, trying to save his flock from the extortion and the injustice of their temporal rulers. In addition to this it must be remembered that at that time the office of the bishop was the only one where even the shadow of the democratic idea was preserved, the only one where the lowest of the people, theoretically at least, had a voice in the election. In later times, when the feudal system becomes established in its completeness, the position of the bishop undergoes a great change, as his relations to the state and to society become more complex in their character; and his importance in the community, while it at first increases, in time surely diminishes, under the influence of his double relation

of lord and vassal to some higher temporal power. When he in his turn becomes the possessor of political power as a great baron or as head of a *civitas*, his interests, and consequently his influence, are concerned with intriguing and with efforts for his own political advancement, in many cases leaving but few traces of the old relation of "defender of the people." It is, however, of importance to note that this decline in his prominence in civil life is commensurate with the diminished need by the people of his protection, owing to the steady increase in the security and independence of their position.

To sum up briefly the chief characteristics of the early and obscure period which we have been considering, I think we can truly call it a transition period, and its history a tottering bridge from the dead Roman municipal system of the past, to the new state and city life of the future; from a state of society where, as we have seen, the city had changed from a political to an administrative division, to one where the city was to prepare itself again to claim, and eventually, by the growth of internal resources, to gain the lost function of sovereignty. The condition of the people during this time we have seen to be wretched in the extreme; the dismantled city but a bunch of comfortless dwellings; its inhabitants but a semi-servile population, with a small admixture of refugees of a better class; the city occupying but a subordinate place as part of the rural holding within whose limits it stood; whatever of wealth it contained an easy if not a legitimate prey to the turbulent spirits, whose mutual contests kept the surrounding country in a continual state of disturbance. The only men of any influence in the community we have seen to be the bishops, who, while steadily gaining in rank and power, stood forth as defenders of the people. During all this time, however, the new sap brought by the northern conquerors has been slowly but steadily entering into and forming the constitution of the people. The chaste and uncorrupted Northmen have by means of legitimate intermarriage with the

best of the enervated inhabitants of the land, raised up an almost new race, who combine in their nature the humanizing effects of the old civilization with the love of independence and the temperate virtues of the northern conquerors, a race willing to benefit by the experience of the past, and resolved to carve out for itself a new and independent future.

PART II.

Elementary Sources of Municipal Unity in Lombard and Frankish Times.

In the second part of this paper we have to consider a period of development rather than one of transition, of growth rather than of change. We have before us the task of tracing the advance from a period of barbarism to one when the feudal system had obtained an almost complete domination over the social system of Europe. Considering the principles which lay at the base of the society of new Europe, this system is a natural, indeed an unavoidable evolution from the stage of barbarism and social disorganization. The confusion in all social and economic relations consequent on the combination of the old and the new elements in European life, had led to a state of disintegration that could not continue. A new regulative force was required which would at the same time have power sufficient to control the various warring elements with which it had to deal and reduce them to some sort of harmony, and yet which would not in its nature be in opposition to the decentralizing spirit and the idea of individual independence, which formed the most marked characteristic of the dominant element of the new society. Feudalism sprang from the midst of barbarism not by a sudden birth, but by a growth at once natural and necessary: natural, because it was but a regulation by law of conditions produced by the character of the people and their mode of life; necessary, because the progress of civilization was carrying society ahead of the stage of anarchy and barbarism in which the overthrow of the old regime had left it.

The economic changes which were produced by the transition to the new principles represented by the feudal system, are as

great and in their way as important as the political ones. When we say that feudalism represents the transfer of the dominant power from a central head to scattered members, from the capital to the castles, we speak of it in its most prominent, its political character. But we must not forget that this transfer also meant a great economic change in the organization of society: that it meant a transfer of the seat of economic importance from the city to the country; the spirit of the times requiring, especially in the earlier stages of the development of the institution, that the seat of wealth should follow the seat of power. I note this now because we shall soon have occasion to consider how important a factor, in the earliest period of the development of the cities, their entire lack of prominence in both political and economic affairs was to prove itself. Under the old Roman system, as we have seen, the city was the important unit: Rome was a subduer and an upbuilder of cities. Under the new Teutonic element the land is what is brought into prominence, and the possessor of it into power. The dominant member of society is the landowner and not the citizen. In ancient society the "citizen" need own no land; in the modern society of the feudal age, the "gentleman" could not be such without owning land.

This opposition between the citizen, the burgher, and the landowner, the baron, leads us to a conclusion of the utmost importance to the whole study of city life during the middle ages. We note the universal prevalence of the *forms* characteristic of the feudal system, and from this we conclude that its *principles* were as universally adopted. Now this is to a certain extent an error. There were certain institutions which from the very nature of their origin and of the principles on which they were based, must have been, at once in their idea and in their structure, opposed to the fundamental principle of feudalism. The Roman Church, for example, conformed itself to the forms and customs of this system, but never lost its structural unity and

centralization, ideas founded on principles which stood in direct opposition to those of feudalism. So it was, though perhaps in a less degree, with the cities. Though adapting themselves in many ways to feudal forms, here the idea of democracy was as strong in its opposition to the dominant principle of feudalism, as ever was that of centralization in the Church. The people, in their own conception at least, stood out as an organic unity, and they considered their rights and duties as matters which concerned them collectively, not separately, as the commonwealth, not as individuals. Of course it was long before any such opposition assumed a definite form and shape, before even the people became conscious of its existence; but what I wish to point out is, that it was there in fact from the beginning, and must have formed a structural part of the development of city life in the middle ages.

In outlining the course of the history of institutions, it is seldom that we are so fortunate as to find definite landmarks by which we can accurately mark the chronological course of their development. The giving of definite dates for the progress of ideas is in most cases both misleading and illusory, as, except in instances of violent revolution, changes are apt to be gradual, rather than immediate and arbitrary. But we can indicate the periods of progress by comparing them with the contemporary political changes, and roughly designate their eras by the dates of prominent political events. In doing this, however, we must always remember that the dates given, while definite from a political standpoint, are in most cases, from an institutional standpoint, only indicative of a more or less extended period of change. This fact being recognized, let us proceed to examine the changes introduced into Italy by the Carlovingian rulers, and the condition of the society upon which these changes were engrafted.

When in the year 773–774, Charlemagne, in pursuance of his idea of universal empire, and aiding the Pope as "Patricius" of Rome, entered Lombardy with his army, took Pavia

after a siege of six months, and shut up Desiderius in a monastery, he found in Lombard society a well defined, if not a perfectly developed system. In all their relations with other nations, the evidence of history proves the Franks to have been a conquering rather than a colonizing race; consequently we may expect to find that in their conquest of Lombardy, they rather gave her only new rulers without materially interfering with the condition of the inhabitants or altering their mode of life. The institutions of the Frankish nation were similar, in many important matters identical, with those of their neighbors across the Alps; so the changes intoduced into the Lombard system by the Carlovingian rule are, with a few exceptions, not such as affect the integral structure of society, but for the most part only such as refer to the character and position of the central or ruling power.

I say with a few exceptions, for among these very exceptions are to be found certain alterations in the government of the cities, introduced chiefly by the necessities of the system of central government established by Charlemagne, but also partly by the claims of individuality, which at this time first began in the cities timidly to call for recognition. The very relation of the cities with the central power seems to me to be a much more important factor in their growth during this period than is generally supposed; for it not only secured to their inhabitants better chances of justice and protection from the powerful local rulers, but, bringing them, through certain officers, into direct connection with the head of the state, added not a little to their moral importance, a condition which in a growing community is always closely followed by an increase of material importance. According to their size they were the seats of courts of varying degrees of importance, and from them as centres proceeded the acts of royal officers, both ordinary and extraordinary. Ticinum was the capital, where in Lombard times the king had his palace.[1]

[1] *Paulus Diaconus:* Lib. V., 7, 17, 18.

For a satisfactory study of the development of the municipal institutions we need a thorough understanding of the organization of society at this time, and especially of the relations which the municipal and rural communities bore to one another and to the government. I will endeavor to give, therefore, a description of Lombard society about the close of the eighth century, as brief as is consistent with a clear understanding of these relations, and as complete as the great difficulties of the subject will permit, pointing out, whenever they are authentically traceable, the changes introduced in consequence of the Carlovingian conquest.

When we reach in Lombard history the period when the power of the native kings was first overthrown by foreign arms, we are no longer confronted by many of the problems which necessarily formed an important part of the earlier portions of our investigation. I mean the problems which arise in a state of society where the mass of individuals forming it is made up of two elements, a conquering, dominant one, and a conquered, subject one. During the two centuries elapsed since the Lombard barbarians conquered Italy, the two races, originally so different in their ideas and in their character, so opposed in their customs and in their nature, have been slowly but surely blending together, on the strength of common environment and by the necessities of mutual relations: so that by the last half of the eighth century, we can truly say that national differences, as such, have disappeared, and left behind them a single race, a combination but still a unity. We no longer have to deal with a double nationality, with the northern conquerors and their southern victims, with the oppressed and their oppressors. In considering the development of the institutional life of the people, we need no longer seek for differences, but may assume the easier task of tracing similarities. In a word, we no longer speak of Lombards and of Romans, but describe all that remains of both by the new word *Italians*.

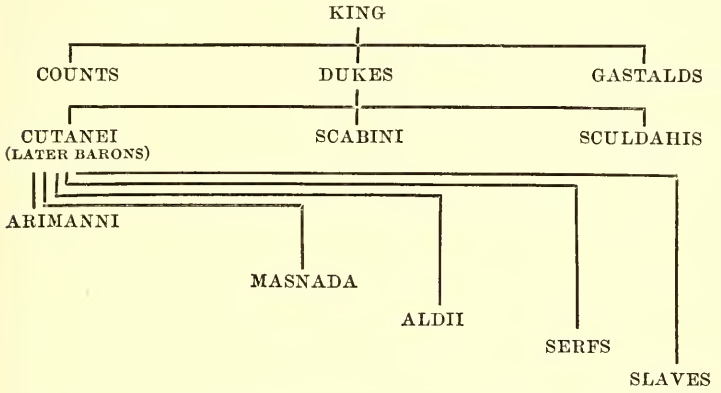
It is not within the scope of this enquiry to trace the

various steps or indicate the various influences, the civilizing effect of the Church, the restraining power of the law, by which this complete amalgamation of two distinct races became an accomplished fact; we need only to note that the unity of the race was achieved. Even Macchiavelli recognizes this fact and, speaking of the time of the Carlovingian conquest, in the brief review of the history of all Italy which forms the first part of the first book of the "Florentine History," he truly says that, after two hundred and twenty-two years of occupation by the Lombards, "they retained nothing of the foreigner save the name."[1]

But we must always bear in mind that it was not a process of absorption of one race by another, but a process of combination, of amalgamation; a levelling process, by which some members of the conquered people, by natural and economic causes, were raised to the level of their superiors; and on the other hand, some of the conquerors, by reason of similar causes, fell to the rank of the subject population. By manumission and by the various forms of vassalage more or less honorable, and by gaining some economic importance by trade and other means, many of the descendants of the Roman population gained admission to the ranks of the Arimanni, and obtained the full franchise by the possession of landed property. By forfeitures, consequent poverty and ultimate pauperization, many of the Lombard stock lost their rank and their lands and entered the same state of vassalage with the great body of the people. We see evidences of this change, this levelling up and levelling down, all through the military code of Liutprand, and in the later one of Aistulf can even more distinctly trace its progress; and without entering into further detail, we can definitely state that, by the time we are now considering, all traces of distinct race-origin

[1] His words are: "Erano stati i Longobardi dugento ventidue anni in Italia, e di già non ritenevano di forastieri altro che il nome."—*Nicolò Macchiavelli:* Istorie Fiorentine, Lib. I. *vid.* Opere, Vol. III., p. 219 (ed. Milano, 1804).

had disappeared in the mass of the people, and the only safe distinction that we can draw is to say that among the families of the dukes and greater nobles, the Lombard stock was preserved comparatively pure, and that the serf population was, generally speaking, of Roman descent.[1]



The above table, while its divisions must not be taken too literally, will, I think, give some indication of the estimation in which the various classes of society were held. It is too early yet in the development of the feudal system to say that the derivation lines show the course of an absolute feudal tenure, and they are not meant for that purpose, but simply to indicate the succession of the inequalities of rank.

Turning now to the territorial divisions of the country at this period, we find them practically unchanged. The *civitas* still stands as the sectional unit; the territory with its city still represents the administrative division of the state. It is fundamental to a correct understanding of the early development of communal institutions that we should have a thorough knowledge of the meaning of this term *civitas;* of the extent of its application and of its limitations. I used the words "territory with its city" in defining the administrative division of the state, and perhaps this term describes

[1] It is difficult to draw any picture of the different ranks of society at this period, which would at once be perfectly accurate, and yet definite enough to give entire satisfaction to the student.

the *civitas* better than any single word would do. In the Roman municipal system we have the city with its surrounding territory, over which extends the jurisdiction of the *curia;* in the Lombard system we have the territory, the land, in some part of which is located a city, a fortified place.

This is to my mind the important point which settles satisfactorily the vexed question of the dominance or the disappearance of Roman influences. The institutions of the Lombards were similar in character to those of the other Germanic races, and the continuance of any overruling municipal influence among them would have done violence alike to their traditions and to the nature of their race. The old municipal predominance as a system disappeared, the old municipal divisions and many of the minor forms and offices as a fact remained. It is these latter which give some color to the arguments of writers like Savigny,[1] who endeavor to maintain the continuance of the old Roman *curia.* They find evidence of the continuance of old boundaries, of many old names and many old executive functions, and fail to appreciate that the principle which lay back of and was making use of these old forms as convenient channels for the expression of its power and of its control, was an entirely new one, based on ideas fundamentally opposed to those of the civilization it had conquered. This slight warning is necessary so as to avoid any error in the conception of the significance to be attached to the geographical limits of the divisions of territory we are considering.

The word *civitas* has the same signification as *comitatus,* when that word was used with the meaning of a territorial division; and included all the territory, with its lands, its villages, its fortified places and its city, which came under the jurisdiction of a *dux* or *judex,* or in Frankish times of a count, when we are strictly justified in giving it the more familiar name of *county.* From this we trace the Italian word

[1] Geschichte des römischen Rechts im Mittelalter, *passim.*

contado, by the steps *comitatu, comitato, contato, contado*. The land division here indicated is indifferently called in the Lombard records *territorium, fines, civitas*, or *judiciaria*. The identity of all these terms admits of easy proof from all the documents, public and private; and numberless instances could be cited showing an interchange of terms in describing the same locality.

I will mention in illustration of this fact the rather neat example of a document of the year 762, published by Brunetti[1] in his Codice Diplomatico Toscano, in which three of these terms are used interchangeably in the space of a few lines. It is a contract by which a certain Arnifrid, an inhabitant of Clusium—the modern Chiusi—who "in clusino territorio .... natus fuit," pledges himself to live on a certain property, and says "nullam conbersationem facias nec in clusio nec in alia civitate habitandum, nisi .... &c.," and promises to pay fifty *solidi* if "pro eo quod ipsa pecunia demittere presumbsero aut de judiciaria vestra suaninse exire voluero." The contract is "Actum in civitate suana." We here see the words *territorium* and *civitas* both applied to the territory of Chiusi, and the words *judiciaria* and *civitas* both applied to the territory of Siena, and we only need to remember that things which are equal to the same thing are equal to each other, to recognize the identity of the terms. If we look at document number eight in the same collection,[2] we will further see the territory of Chiusi referred to as "fines clusinas."

Hand-in-hand with the growth of episcopal organization we see another term coming into use in connection with the same land division, and this also is an administrative one, but of the church simply, and only made use of by conversion or carelessly when applied to a civil area. I mean the *districtus*, which term is properly applicable only to the

[1] *Brunetti:* Cod. Diplom. Toscan. Firenze, 1806, Docum. No. 44.
[2] *Idem.* Docum. No. 8.

jurisdiction of a bishop, and designates the limits of his episcopal power, that is, his diocese. The reasons for this term being used in later times occasionally for the civil division, the *civitas*, are twofold. They result, firstly, from the confusion which arose between matters of civil and ecclesiastical jurisdiction, when political power was given to a large number of the bishops, and when they united to their religious duties as pastor, the judicial and sometimes even some of the military duties of *comes* and *judex*. And secondly, in the important fact that in almost all cases the boundaries of a bishop's diocese coincided more or less exactly with the limits of the authority of the state officers; so that the division which should be called a *civitas* or *territorium* from the point of view of civil government, should be called a *districtus* from that of ecclesiastical government.

Where we find at once the most important and, if not rightly understood, the most perplexing traces of the survival of the old Roman municipal system, is in this matter of territorial boundaries. According to the Roman system, as we have seen, the city was the important administrative unit, and each city was surrounded by a belt of rural lands, more or less large according to the size and importance of the city itself. This of course resulted in a division of the whole country into a number of districts whose boundaries were definitely marked, perhaps even jealously guarded. Now, when the Lombards took possession of the country, while they rejected the principle of the municipal unit, as foreign to the character and instincts of their race, they could not fail to see the practical utility of using, and the actual difficulty of overthrowing, a system of land division which custom and authority had united in rendering alike definite and convenient. What was the result? They made use of the old boundary lines, leaving their limits, as far as we can judge, untouched, and substituted as the fundamental principle of their administration, in place of the Roman idea of the *municipium*, the thoroughly Teutonic idea of the *civitas*

or country district. Coincident with these time-honored boundaries which served to mark the limits of the jurisdiction of the duke and the *judex*, are to be found those of the ecclesiastical power, of the bishop's diocese.

This statement is confirmed by the many charters, immunities, etc., addressed to the episcopal authorities; and direct proof of it may be had by reference to the controversy which arose in the first half of the eighth century between the bishops of Arezzo and Siena, which dispute was based on the fact that for reasons definitely stated these two dioceses formed an exception to the general rule. The strength of the proof lies in this exception, which had a well-known cause for its origin. Some of the documents[1] in the case, of the year 715, show that the bishop of Siena claimed for his jurisdiction certain churches which belonged to the diocese of Arezzo, basing his claim solely on the ground that these churches were situated in the *territorium* of Siena. The bishop of Arezzo, on the other hand, claims them as part of his diocese, on the ground that they had formed part of it ever since the beginning of Lombard rule in Italy; and—which is the part of importance to us—gives as the only reason for their having been attached to the diocese of a neighboring *territorium*, the fact that at that early date there was no bishop in the *territorium* of Siena. That a claim of such a character should have been based on the argument of the natural coincidence of the boundaries of *territorium* and diocese, is sufficient proof of the identity of these limits at that age. In a bull of the year 752,[2] Pope Stephen II. decides to adhere to the already existing diocesan divisions, and adjudges to the bishop of Arezzo the churches "quae esse manifestum est sub consecratione et regimine praefatae S. Aretinae Ecclesiae, territorium vero est prefatae nominatae Civitatis Senensis."

We see then the perpetuation of the old Roman land divisions in the new commonwealth through the medium of the

[1] *Brunetti:* Cod. Diplom. Toscan. Docum. Nos. 6–10.
[2] *Idem.* Docum. No. 43.

civitas and the diocese. How long these divisions remained intact and what were the causes and the extent of their final overthrow, forms part of the history of the later development of the Italian communes. Here I will simply indicate the fact, that among the reasons which led in most instances to a departure from this system of land boundaries, are to be found some of the most important causes for the development of freedom and independent jurisdiction among the cities. It is to the destruction of this identity of interests and of government which existed between country and city, that is owed the ultimate predominance of the latter, and its regaining its ancient position of a self-centered unity; although in its new form we find this depending on the principle of individual liberty, instead of being based on the principle of government by a central power. Whether this emancipation from the bonds of a rural dependence was brought about by the practice later entered upon, of breaking up the counties into a number of smaller units with the so-called "rural counts," each ruling over a *castellum* or fortified village; or by the fact that many of the bishops obtained political as well as religious control over a city and a limited area of the surrounding country, generally extending only three or five miles beyond the city walls; or whether this freedom was the result of the spontaneous growth of civic and economic life within the city itself; or finally, whether it came from a combination of all these and many minor causes, is a question which—for the early period of the development at least—the progress of our investigation will answer for itself.

It will, however, be impossible for us to understand thoroughly the relations of the city under Lombard and Frankish rule to the central and to the local government, unless we know somewhat of the local and state officers who exercised jurisdiction within the territorial limits just described. By a consideration of their special powers and of their special duties, we must learn all that we can know with any degree of certainty with regard to the position of the city in these

times. With this in mind, let us first examine the office whose functions it is at once the most difficult and the most important for us to understand in all its bearings—that of the *Judex*. We must consider it not only in the relation which it bears to the higher grade of officers, the Lombard duke and the Frankish count, but also in its relation with the lower officials who severally enjoyed more or less of the powers attached to its possession, namely, the gastald, the sculdahis, the scabino, and even the rural counts and the bishop. And in tracing its development we must note the influence it bore on the growth of the municipal idea, and also its connection with the political jurisdiction, commonly combined with it in the person of a single official.

In considering the institutions of a comparatively crude state of society, such as existed in Europe in the early middle ages, it is misleading if not impossible to differentiate to any great extent the various functions and kinds of power which were commonly centered in the same individual. Consequently the only safe way to give a clear idea of the position and the powers of the *judex*, is to give a description of the various offices to which judicial authority was attached, in degrees more or less complete, corresponding to the social and political importance of the person exercising this authority.

In the Lombard system, at the head of each *civitas*, as lord and as judge, was the *dux*, or duke. His title and his office being but the relic of his original high position of leadership in the army of the invasion, when his command was only subject to that of the king, the leader-in-chief of the army-nation and head of the military constitution, he held directly from the king, attended the royal *placita* as the king's vassal, and held *placita* of his own within his own jurisdiction, and over which he presided in person. Beyond the duties of his own particular jurisdiction his chief office was to assist the king by his presence and his counsel, when the king gave his judgments at the annual assembly in

March, at the capital Ticinum. The importance of this concurrence of the *judices* in all the king's decrees and official acts is illustrated by the fact that cases are rare in which this concurrence remains unmentioned. The usual practice is to introduce in the prologue which is commonly attached to the laws given out during each year of the king's reign, after the mention of the date "Kalendiis Martiarum," some such expression as "cum nostris Judicibus";[1] or "ad nos conjungerentur Judices";[2] or "per suggestionem Judicum";[3] to which is sometimes added the formula "omniumque consensum,"[3] or "cum reliquis nostris Langobardis fidelis." That legislation was not considered valid until such consent and advice was obtained, we can see from the prologue to the laws issued in the thirteenth year of the reign of Liutprand, in which he refers to certain important "causae" which had come under his jurisdiction, and for which additional legislation was necessary, the laws already existing failing to reach them. To meet the exigency new laws are enacted, but the king especially states that the cases must remain in abeyance until the new laws are confirmed by the *judices* at the next assembly in March. In speaking of these "causae" in the above-mentioned prologue to the laws, he says: "Proinde providimus eas usque ad suprascriptum diem Kalendii Martiarum suspendere dum usque nostri ad nos conjungerentur judices," etc.[4] This attendance at the royal *placita* represents the most important of the legislative duties of the *judex* outside of his own jurisdiction.

Of other duties which caused him to leave the seat of his authority, the only ones we need here consider are his military duties; and with regard to these it will be sufficient to

[1] *Liutprandi:* Leg. Long. Prolog. Anni XVI. et XV. et al. Vid. *Muratori:* Script. Rer. Ital., Tom. I., P. II., p. 15, et seq.

[2] *Liutprandi:* Leg. Prolog. Anni XIII. Vid. *Muratori:* Script. Rer. Ital., Tom. I., P. II., p. 15.

[3] *Grimoaldi:* Leg. Prolog. Vid. *Muratori* op. cit. Tom. I., P. II., p. 49.

[4] *Liutprand:* Leg. Prolog. ad Lib. III. Vid. *Muratori:* Script. Rer. Ital., Tom. I., Pars II., p. 15.

point out that the *judex* was the leader in war of the vassals and lesser lords, and indeed of all the inhabitants of the *judiciaria* who were entitled or compelled, by the forms of their tenure, to bear arms. Ample proof of this is to be found throughout the law codes, but we need not pause to cite such confirmation, if we remember the natural evolution of the office of *dux* from his position in the original Lombard military system. As a good example of this military leadership we may refer to the provisions of the twenty-ninth law in the sixth book of the laws of Liutprand.[1]

What is of the greatest importance to us, however, in bringing out the relations of the cities to the rest of the community in Lombard and Frankish times, is the position of the *judex* as duke and as count within his own *judiciaria*, that is, within the *civitas* of which he was both lord and judge. It was through him, or perhaps I should say chiefly through him, that the city was at this period connected with the state; and it was principally by the exercise of the functions of his office that the city formed a part of the state. His official residence, in the majority of cases, and his courts, were situated within the city's limits; thus making the official machinery of government a part of the city life, and causing the city to become an actual if not a legally recognized part of the constitution of the state. As far as this investigation is concerned, this represents the prominent feature of the power and position of the head of the *civitas*. We must be careful, however, to avoid any confusion of ideas as to the importance which it gave to the city as a municipal unit or as a corporation. It was in no way what we could call a municipal government, even admitting a rather loose interpretation of the term, as the supporters of the theory of the survival of the Roman curial system would have us believe.[2] The *judex* may be called "the highest municipal officer

[1] *Muratori:* Script. Rer. Ital., T. II., Pars II.

[2] *Savigny:* Gesch. des röm. Rechts im Mittelalter, S. 422 et al.

among the Lombards," and this designation still be correct, though perhaps misleading. He was the highest officer of the locality, and his official duties were for the most part carried on within the city; but the leading fact we must keep prominently before us is, that he was the head of the whole *civitas*, and not in any sense of the city as such: and further, that his powers over the rural portions of the *civitas* were in no sense added to any purely municipal powers he may have possessed; but, on the contrary, if we are to draw any distinctions, the municipality formed a part of the land division. That the whole *civitas* was commonly named after the largest town contained within its borders, and that the seat of power was generally placed within the city walls, are facts too evidently brought about by motives of convenience and expediency and by the force of old association, to lead to any confusion in appreciating the proper place of the city. Where there were to be found buildings suitable for the residence of the *dux*, and where was located the largest collection of individuals, was manifestly the most appropriate place for holding the courts and settling the disputes of the inhabitants of the whole *civitas*, and this formed a natural centre for the machinery of government. But every inhabitant of the *civitas* had equal rights with the townsman proper, and, as in the old Greek πόλις, the most remote countryman dwelling on the borders of the *civitas*, if he possessed the franchise, was as much a citizen of Padua, Siena or Milan, as if he dwelt within the walls of the city which gave its name to the whole *civitas*.

A consideration of these facts brings out two important points, which I will briefly indicate before passing on to a little more detailed treatment of the powers and the duties of the *judex*. In the first place it has been made clear that at the time under discussion nothing that could correctly be called a "municipal system" existed in Lombardy, and the city, *as such*, had no independent existence or independent relations with the state. And secondly, it cannot but be

manifest that the position that the city did occupy as actual, if not necessarily as legal, centre from which issued all the administrative functions of the district, the residence of the chief authority and the seat of his courts, would have a marked tendency to increase slowly, perhaps imperceptibly at first, the importance of its position at once in the *civitas* and in the state, and at the same time to improve the character of its inhabitants and in time increase their wealth. That this ultimately came about the development of the later independent communal life is a proof, and the tardy steps by which this was attained but serve to show the difficulties consequent on so slight and so feeble a beginning.

The obscurity which promptly descends on the brain of the intelligent reader who endeavors to gain a clear idea of the state of society or of the administration of government in these early ages of Italian history, makes the careful student very skeptical of any precise presentation he may find of them, and causes him to be particularly cautious and proportionately diffident in making, himself, any very definite statements concerning them. If he be a wise man and wish to make his investigation of some use to others, he frequently says "it seems probable," and he particularly avoids mentioning dates which are fixed and immovable. If this may be said of all matters not belonging simply to the narrative portions of history at this period, particularly true is it of the different functions attributed to various officers of local government, whose very titles we sometimes have to infer from their duties, and whose duties we often have to infer from their titles.

To these the *judex*, though the most prominent, cannot be said to form an exception. That he was the head of the district judicial system has in part been already shown, and will come out more clearly when we come to define the powers of some of his subordinates. His leadership in war we have seen to be but the natural continuance of his original office; and that as *dux* he was to be ranked among

the first nobles of the land, the "optimates," the "viri illustres," we can see from the following passage in the laws of Liutprand, when in the prologue to the third book already quoted, he gives forth the edict with the judges as "una cum illustribus viris optimatibus meis ex Neustriae et Austriae et Tusciae partibus vel universis nobilibus Langobardis."[1] Although the position of the *duces* as nobles of the land never altered, their power relative to that of the king suffered many modifications. The ducal power—"principes" of Tacitus—preceding among the Lombards that of the king, we see the dukes exercising much greater control in the earlier stages of the monarchy: even, on the death of Clefis—576—actually establishing a sort of aristocratic republic, under the leadership of thirty dukes, which lasted for ten years; after which time, on the event of a dangerous war with the Greeks and the Franks, Authari, the son of Clefis, gained the throne by election; the dukes giving up to him, says Paulus Diaconus,[2] the half of their estates for the support of his dignity, retaining, however, the rest, not as servants of the king, but as "principes" of the people, an important distinction. Agiluf—591 to 615—originally duke of Turin, met with much opposition from the power of the dukes; but when we come to the time of Rhotari—636 to 652—we find their power already declining, and in the eighth century, as for example under Liutprand—712 to 736—the laws show them reduced to the position of the other *judices*, but still representing a high aristocracy whose consent was, as we have seen, necessary to all acts of the king.

The most important of the functions of the *dux* as *judex* was holding the *Curtis Regia* or *Curtis Ducalis*, in the largest city or "urbs" of every *civitas*. Here, in conjunction with his subordinates, he heard all cases which did not go up to the king for judgment, and here was centered the fiscal ad-

[1] *Muratori:* Script. Rer. Ital., Tom. I., Pars II., p. 15.

[2] *Paulus Diaconus:* De Gest. Langobard., Lib. III., cap. 16.

ministration of the *civitas*. To describe in detail the composition of these *curtes*, their jurisdiction and methods of procedure, would require a whole chapter of no mean proportions, and however interesting in itself, would be out of place in the present investigation. All that it is needful for us to consider is the relation of these *curtes* to the municipalities in which they were located. Of their location within the city walls the proofs to be found in numbers of the old documents are to me conclusive. I will give a few examples, however, commencing with two from the documents which have already been quoted from Brunetti, relating to the dispute between the bishops of Siena and Arezzo. In the first of these[1] we see that in the year 715, the king's *majordomus* Ambrosius interferes "in Curte a Domini Regis" at Siena, in opposition to the local bishop and gastald; and in the second[2] we find the royal notary Gunthram forbidding a fresh examination of witnesses "in Curte Regia Senensis." In a document of the next year[3]—716—we find "Ebugansus, Notarius regiae Curtis," taking part in the procedure in a case between the bishops of Pistoia and Lucca; and a little later, in the year 756, is mention of an exchange of property between "civitis regia lucencis" and the church situated in that city.[4] In the "Opusculum de Fundat. Monast. Nonantulae," published by Muratori,[5] we find a donation by King Aistulf to that monastery: "prope castellum Aginulfi, quod pertinet de curte nostra lucense, et duas casas masaritias de ipsa curte"; and "granum illum, quod annue colligitur de portatico, in Curte nostra, quae sita est in Civitate Nova."[6] In Carlovingian times Charles the Bald, in the year 875, in the "Chronica Farfense,"[7] appears as saying, "in Curte

[1] *Brunetti:* Cod. Diplom. Toscan. Docum. No. 6, anni 715.
[2] *Ibid.:* Cod. Diplom. Toscan. Docum. No. 8, anni 715.
[3] *Ibid.:* Docum. No. 11, anni 716.
[4] *Ibid.:* Docum. No. 50, anni 756.
[5] *Muratori:* Script. Rer. Ital., Tom. I., Pars II., p. 192E.
[6] *Muratori:* Antiq. Ital. Diss. II., p. 186.
[7] *Muratori:* Script. Rer. Ital., Tom. II., Pars II., p. 409.

nostra infra Castrum Viterbense": elsewhere "curtis regie Viturbensis" is spoken of:[1] and later, in 899, Berenger gives to the bishop of Florence "terram .... pertinentem de curte Regis istae Florentiae":[2] and finally, not to multiply examples, I will mention a privilege of Karloman's, published by Ughelli,[3] by which he gives to the bishop of Parma certain regalia: "id est curtem regiam extructam infra civitatem Parmam cum omne officio suo," etc. From even these few instances we can see the connection between the *Curtis Regia* and the city which gave its name to the *civitas*, a connection the importance of which we must not fail to appreciate, in consideration of the great influence which it exercised in the future development of the municipal unit from a beginning so insignificant.

Of some importance in connection with the early history of the cities are the questions which arise in relation to the fiscal duties and privileges of the *curtes regia* and its officers. In it was centered the fiscal administration of the kingdom; and its officers, in the various grades from the *dux* downward, received and were responsible for the revenues of the state. So prominent a part belonged to this form of the functions of the *curtes* that it is quite common to hear the revenues themselves, by a transposition of terms, called by that name, or by that of *palatium*, a word sometimes found even for the *curtes regia* in their proper general sense; but this, from what I have been able to gather concerning its legitimate use, should properly be applied only to the residence, or by conversion the revenues of the king himself.[4] What is of interest to us

[1] In a donation to "Aimo Voltarius, abitator castrii Viterbii." Vid. *Troya:* Della Condizione, etc., p. 361. Docum. No. 6, anni 775.

[2] *Ughelli:* Italia Sacra, Tom. III., p. 28.

[3] *Ibid.:* Tom. II., p. 145.

[4] The word *palatium* in the signification of *fiscus* is perhaps more frequently used by the Frankish kings than by the Lombard. See a *privilegium* granted to the nuns of the Posterla di Pavia by Lothar I. in the year 839, in which it appears that any one infringing its privileges must pay seventy pounds of the best gold, to be applied "medietatem Palatio

in this matter is the fact that the *curtis regia* fell heir to the *publicum* or communal property of the old Roman *curia*, when these were overthrown by the Lombard conquest.

In considering this phase of civil administration under the Lombard system, we are again brought face to face with the old question of the survival or non-survival of corporate existence among the cities. For if it could be proved that the municipality in its corporate capacity retained the communal property and administered it, there would appear to be good grounds for the assertion of the continuance of some form of quasi-independent municipal government; but if, on the other hand, it were found that the property of the municipality passed to the new head of local administration or to the central power, it would be evident that the continuance of the municipal system as such was a logical impossibility; for, deprived at once of its property and of its revenues, it would have had no vitality to keep it from a speedy end.

In investigating a question of this nature from the sources at our disposal in a period of history so obscure, we cannot expect to find any definite statements sufficiently precise to set at rest at once all opposition and discussion; but after considering the character of the people we are investigating and studying their institutions, and after a careful examination of the laws and records which form the sources of our information, we are, I think, in a position to be able to give a sufficiently decided opinion as to whether a particular set of facts or conditions could possibly have existed in a state of development and in a society of a given character. Thus it is in regard to the matter in hand. From the numberless

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nostro, et medietatem parti ejusdem monasterii." Vid. *Muratori:* Antiq. Ital. Diss. XVI., Tom I., P. I., p. 233. Also several diplomas of Charles the Fat, and others make use of the same term. The word *camera* for *fiscus* as the imperial treasury, was probably not used before the time of Lewis II.; the first authentic use of it in that sense being probably a diploma of that monarch of the year 894, where he says that one hundred pounds of gold are to be paid "medietatem Imperiali Camere et medietatem supratаxatae Angilberge." Vid. *Muratori:* loc. cit. p. 234.

cases in which the *publicum* is mentioned in the documents from which we draw our materials, it seems to me possible for a critical examiner to come to but one conclusion, if, as is quite essential, he take into consideration the unmistakable spirit of these writings, and if he give a legitimate interpretation to the various terms employed. To cite in direct proof any individual instance is, perhaps, impossible; but indirect evidence is forthcoming in abundance, and of a character to be, to me at least, entirely conclusive. The conclusion reached is, then, that the king and the dukes were the successors of the old *curia* in the possession and the administration of all properties and revenues, taxes and fines formerly belonging to the organized corporations of the Roman municipalities, and that the *curtes regiae* were the channel through which these were collected, divided and expended.

The grounds on which this assertion is based are the continual recurrence of examples of functions of a fiscal character being exercised by the head of the *civitas* and his officers, and by them alone; and it appears to me that it could only be by a complete misunderstanding of the spirit of the early writings, and by a comprehensive misapplication of the terms used in them, that these functions could be referred to any other power. These functions of the administration may be grouped under three main heads, viz: 1. Fines and forfeitures, which, of course, played a very prominent part under the Teutonic system of composition for offenses of a criminal nature; 2. Taxes and privileges, by which is meant feudal rights, dues, etc.; and 3. Buildings and lands belonging to the crown or to the head of the *civitas* as a public officer.

Of the fines and forfeitures paid into the *publicum*, we find that a part went to the royal treasury and a part to the *judex*, and in some cases to the informer or the prosecuting officer; and at different times we find these proportionate amounts definitely defined—as, for instance, in the time of Charlemagne two parts went to the king and one part to the count who

acted as *judex*;[1] this we know from two of the Lombard laws of that emperor.[2] In one of these,[3] speaking of those who evaded military service, he says: "Heribannum comes exactare non praesumat: nisi Missus noster prius Heribannum ad partem nostram recipiat, et ei," the Count, "suam tertiam partem exinde per jussionem nostram donet."[4] We even find evidence of quite a large amount of liberty used by the *duces* in the ultimate disposal of property coming under their jurisdiction by forfeiture, the more powerful making use of it precisely as if it were private property. For example, in the Chronica Farfensis[5] appears a case judged by Hildeprandus, *dux* of Spoleto, in the year 787. A certain nun named Alerona, for having married a man named Rabennonus, "secundum legem omnis substantia ipsius ad Publicum devoluta est"; a little later Rabennonus, for having killed a man, "medietas omnis illius substantiae ad Publicum devoluta est." In consequence, in poetic justice and for the good of his soul and the king's, Hildeprandus quite arbitrarily presents "omnem praedictam illorum substantiam, qualiter secundum legem juste et rationabiliter, ad Publicum devoluta est," to the Monastery of Farfa "pro mercede Domnorum nostrorum Regum et nostra." Here, as in many other cases, we see the *dux* making gifts of property belonging clearly to the *publicum*, to persons favored by him and for his own benefit. Such a condition of affairs would certainly never have existed had public property been administered by authority other than that of the *dux*.

With regard to the revenues falling under the second of the rough divisions we have indicated—taxes and privileges

[1] From *Otto of Freising*, De Gest. Freder., Lib. I., cap. 31, we know that the same distribution took place in Hungary, which was divided into seventy *comitates*; "et de omni justitia ad Fiscum Regium duas lucri partes cedere, tertium tantum Comiti remanere."

[2] *Charlemagne:* Leg. Lomb. Nos. 127 and 128.

[3] Lex No. 128.

[4] *Muratori:* Diss. Ant. Ital. Dissert. VIII., Tom. I., P. I., p. 96.

[5] *Muratori:* Script. Rer. Ital., Tom. II., Pars II.

—it is easier to see why differences of opinion should have arisen; for here, especially in matters relating to the collecting of taxes and dues, we are confronted with the names of a large number of lesser officials and subordinates of the *judex*, some of which are undoubtedly taken from the like officers existing in the old Roman curial system. But this survival of names, and in some instances of offices, need cause us no alarm, for it coincides exactly with the theory presented, namely, a continuance of many of the old *forms* of administration controlled by an entirely new *principle* of government. There are certain minor functions necessary for the support of the state which must be carried on in much the same manner, whatever be the character of the governing power—certain subordinate offices whose duties must be performed under a republic or under a despotism. Taxes may be collected by widely differing methods under the two systems, but there must always be the tax collector and the tax assessor. We can, however, see at a glance the weakness of any argument which contends that because the name and even the general duties of the tax gatherer were the same in each case, that the whole system of administration of the taxes or of the community were necessarily identical or even closely allied in character.

It is here we see the weakness of those writers who insist upon the continuance of the Roman *curia* in the municipalities of the Lombard kingdom. They seize upon a few names, relics of Roman rule, and from them generalize a complete system of taxation and administration. That the existence of any such system is alike contrary to fact and to the whole nature of the Lombard people, any critical and impartial study of the sources of government revenues at this time will make clear. It would be out of place to burden a paper of this character with the results of a minute investigation into the fiscal relations of the rulers and the people when this has no immediate connection with the development of municipal government; but I will state that a

careful examination of all available sources, including documents and statutory enactments, both public and private, reveals, to my mind, a theory and a system of raising the revenues of the state closely allied in both principle and detail to feudal forms and feudal ideas, and having little in common save the names of a few of its officers, with the ancient methods of collecting the taxes peculiar to the Roman municipal constitution.[1]

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[1] In illustration of this fact I will cite the names of some of the various taxes, dues and privileges, mention of which is found in the old documents. The feudal character of these will be apparent to the reader. Following the rough division indicated in the text, we have:

I. Under heading "*Fines and Forfeitures*":

1. Forfaturae:
   Forisfacturae,
   Multae (Mulcte),
   Freda,
   e. g. Leudis (Leudum) for homicide.
   Penalties and compositions for crime.

2. Scadentiae:
   Excadentia,
   Bona caduca.
   Publicum falls heir to various classes of individuals. Cf. Leg. *Rhotari*, No. 158 et al.

3. Lagan (Laganum).
   Seizure of shipwrecked goods by the state. Examples more common after year 1000 A. D.

II. Under the head of "*Taxes and Privileges*":

1. *Onera Publica*, or Angariae (Perangariae), Factiones publicae.
   a. Heribannum: Penalty for avoidance of military service. Cf. *Charlemagne*, Leges, No. 23 et al.
   b. Heribergum: Hospitality to *Missi* of emperor or king. Cf. *Charlemagne*, Leges, No. 128 et al.
   c. Mansionaticum (Mansiones, Evectio): Lodging for king and his ministers.
   Conjectum was a pro rata tax on a district so as to meet the expense. Cf. *Lud. Pius*, Leg. Nos. 54, 24, et al. loc.
   Tractoria gave specification of what should be provided in each case. For Formula, v. *Marcolfo*, Lib. I.

In general terms, the collectors of the revenues were called *telonarii*, or *actores*, *exactores* or *actionarii*, etc., and the taxes they collected were the usual feudal dues, fines, forfeitures, compositions for service, etc. The nomenclature of these various officers and of the different duties they had to levy, varying as it did with regard to locality, and more especially with regard to time—the Franks introducing an entirely new set of names for institutions often identical in character to those displaced—presents an amount of confusion which, fortunately, it is not necessary for us to endeavor to pene-

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d. Veredi (Paraveredi): Horses and beasts of burden for king and ministers. Cf. in Capitular. Reg. Franc. saepe. Capit. *Lud.* II., Ad Missos, etc.

Census vehicularius, fiscalis or publicus was post to carry, free of expense, king's letters, etc.

e. Foderum (Fodrum): Support of a king and his army in passing through a district. Cf. many privileges and exemptions to different churches and monasteries. Articles of the Peace of Constance. Some privileges to private persons.

2. *Teloneum.*

a. Pedagium: General word for *tolls* on streets, roads, bridges, etc.

α. Pontaticum, for bridges.

β. Portaticum, for gates.

γ. Platiaticum, for license to sell in market.

δ. Casaticum, for houses.

Cf. *Otho* II., Diploma to Monast. Volturno a. 983, et al. loc.

b. Ripaticum: General word for tolls and taxes for transport by water. Cf. Diploma of Berenger II. v. *Ughelli*, Italia Sacra, Tom. V. Also a Privilegium of Charlemagne, anno 787. v. *Ughelli*, Italia Sacra, Tom. V., a. 787. This privilegium confirms the laws of Liutprand, and shows how much the inhabitants of Como had to pay in various places in moving salt down the rivers of Lombardy.

α. Paliscitura,

β. Trasitura,

γ. Navium ligatura.

Wharfage dues.

trate; but, having stated the foregoing general conviction with regard to the fiscal system, we will now pass on to a consideration of some of the lesser offices held within each *civitas* by the deputies and subordinates of the *dux*. These, of course, were connected, in degrees more or less close, with the different *curtes regiae*, and with the *placita* held in the various *civitates* commonly about three times in the year. Some of the officers, like the *vice-comes* found to have existed in many localities, are simply deputies of the *dux*, or repre-

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δ. Portonaticum, harbor dues.
ε. Curatura, probably a tax on certain merchandise.
ζ. Passagio, probably same as preceding, but possibly a tax in favor of those going to the Holy Land.

3. *Auxilia* (Occasiones) (dues from vassals):
a. Praestitiones.
b. Dona.
c. Gratuita.
d. Mutua.
More common after the year 1000 A. D.; but, for an example in the year 873, see a Diploma of Lewis II., published by *Puricelli* in his Monumenti della Basilica Ambrosiana.

III. Under head of "*lands owned by Crown or Publicum*":
1. *Terra Censualis*. Holder of t. c. owed these duties:
a. Glaudaticum,
b. Escaticum,
c. Herbaticum,
d. Datio,
e. Alpaticum,
f. Agrarium.
Payments for right to pasture cattle and swine on public lands. Cf. Chron. da Volturno, a. 972. Chron. Farfensis. Privileg. Lud. Pii, et al. loc.
g. Terraticum, amount of produce given for right to cultivate.
h. Pascuarium, payment for sheep pastured on the public land.
i. Boazia, tax levied on every pair of oxen; probably not developed before XII. century.

The taxes and so forth mentioned in this list are by no means all that were levied, but are a fair representation of them. After the year 1000 their feudal character is even more strongly marked.

sentatives of his person, and hold their office simply by virtue of his will and under a somewhat arbitrary tenure; others, like the gastald, the *sculdahis*, and later the *scabinus*, represent offices which formed an integral part of the constitution of the government, and appointment to which, whether made by the *dux* or by the central power, involved a necessary duty of a determinate character. An accurate determination of the relative positions of these various minor officials, of the extent of their jurisdiction and of its limitations, presents one of the most difficult problems which the student of these dark ages of history is called upon to solve. The peculiar character of the sources from which we have to derive all our information makes it quite possible for all writers on the subject to disagree with regard to details, and leaves a wide margin for discussion even on the important characteristics of the various offices. Avoiding as much as possible the points of controversy, I will endeavor to give the general features of the more important of these offices, the conclusions given in each case resulting from an examination of the different theories held and of the sources on which these are based.

The officer who seems to have ranked next in importance to the *dux* within the limits of the *civitas* is the gastald, who goes indifferently by the name of *gastaldus*, *castaldius*, or *gastaldio*. His powers were of a judicial character, and he shared with the *dux* the title of *judex*; but whether he enjoyed the full prerogative of a *judex civitatis*, or whether his judicial functions were of a more limited character and referred exclusively to matters of a fiscal nature belonging to the *curtis regia* or the *camera* of the king, is a question to which the evidence to be gathered from the law codes gives no decided answer.[1] It seems probable, however, from the

[1] This statement, while true of all integral parts of the Lombard kingdom, must, however, be modified in regard to the great duchies of Spoleto and Beneventum, which were under a different system of internal government from the kingdom of Lombardy proper—were, in fact, small

importance seemingly attached to the holders of this title in the many cases in which they are mentioned in the old laws and documents, that their jurisdiction was of a broader character than would be implied by a restriction to purely fiscal functions; in fact, that it approached more nearly to the power of the *dux* and *judex civitatis*, though being in some way of less extent or possibly supplementary to it. Perhaps the distinction would come out more clearly if we said that the office was characterized by its relations to the fiscal functions of the state, but that its duties and privileges appear not to have been restricted to affairs of that nature. It is certainly true that very many instances occur in which the duke and the gastald are alluded to, whether in laws or in contracts, in precisely the same terms and in positions which would seem to indicate an almost perfect equality of dignity. As, for example, in a meeting between Liutprand and Pope Zacharias, described by Anastasius Bibliotecharius,[1] where dukes and gastalds are together reckoned among the *judices*: here the king goes to meet the pope "cum suis judicibus," and gives him as an escort "Agripandum ducem Clusinum, nepotem suum, seu Tacipertum Castaldium et Remingum, Castaldum Tuscanensem." In spite of this apparent equality, however, it seems to me nearer the truth to consider the position of the gastald as an inferior one to that of the *dux*,

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tributary kingdoms under great dukes enjoying practically royal powers. The Duchy of Beneventum seems to have been divided into *gastaldata*, divisions of territory similar to the *civitates* of Lombardy, but presided over by a gastald instead of by a *dux* or *comes*. In the charter of division made between the dukes of Beneventum and of Salerno in the year 851—v. *Muratori*, Ant. Ital. Diss. X.—are mentioned "integra gastaldata, seu ministeria Tarentum, Latinianum, Cusentia, etc." And, at an earlier date, *Paulus Diaconus*—De Gest. Long., Lib. V., cap. 29—tells of a certain "Alzeconis Dux de Bulgaris," to whom Grimoald, Duke of Beneventum, gives "ad habitandum . . . Lepianum, Bovianum et Inferniam, et aliis cum suis territoriis civitates; ipsumque Alzeconem mutato dignitatis nomine, de duce gastaldium vocari praecepit."

[1] v. *Muratori:* Script. Rer. Ital., Tom. III., Pars II., p. 162D.

especially in Lombard times, before that official was replaced by the *comes* of the Carlovingians.

The important point which it is necessary to emphasize in this connection is the fact that the gastald held his tenure, not from the *dux* as his subordinate, but from the king in person, and for this reason can more fitly be compared with the later count than with the *dux* of the Lombards. Consequently it is in the matter of tenure that I think is to be found the difference in power between the two officers. In addition to his official authority, the *dux* was possessed of a power and an influence entirely his own, derived quite as much from the number of his vassals and his position in the *civitas* as from the grant he received from the king. At home he was a powerful lord, and though he, of course, owed fealty and service to the king, he was by no means a king's servant, like his successor the Carlovingian count. The gastald, on the other hand, was eminently a servant of the central power; and whether or not he was engaged exclusively in looking after the fiscal interests of the masters who employed him, he had no power and no influence except such as he derived from the source of his authority. He was a king's minister and nothing more, and we can easily appreciate that the amount of power he was enabled to exercise could never exceed the amount of influence in local affairs possessed at any particular time by the central government, whose representative he was.

But the very nature of the source from which the power of his office is derived is what connects it vitally with the subject of our enquiry. We have seen the *dux* as head—in the earliest times almost independent head—of the whole *civitas*, including rural and city jurisdiction. We have seen him as an official, depending from the king, it is true, and holding the king's *placita* and executing the law, but also holding *placita* of his own; appearing as a powerful local lord, and exercising almost arbitrary power in the regulation and the distribution of the public property

of the commonwealth over which he ruled; in fact, a descendant of the old *duces* of the Lombard barbarian host, who, perhaps, even antedating the royal office, held their power and their position as princes and chosen leaders of the people, rather than as appointees or dependents of any higher authority. In the gastald, on the other hand, we have an official of an entirely different type—one not belonging to a powerful class of lords or leaders which traces its origin to the spontaneous choice of the people or army, but one who gets his appointment at the will and in the interests of the central government, and is commissioned to exercise certain functions of the administration as an assistant to, perhaps even as a check on, the power of the local head.

Such an official was naturally located at the place where the district courts held their sessions, and where the fiscal duties which he especially had in charge were most easily executed. As we have seen in the case of the *dux*, convenience points to the *urbs* of each *civitas* as a natural centre, and consequently here again we find the office of gastald as another agent in bringing the municipal division into prominence; but doing this, we must always remember, simply from the fact of convenience or fitness, and not in any sense as a matter of constitutional necessity. Like that of the *dux*, the jurisdiction of the gastald was exercised over the remotest farm of the *civitas* as much as over the palace in the city: *de jure*, the city gained nothing by the circumstance of its being the centre of the administration of any office; but, *de facto*, the holding of such a position can easily be seen to have been an important element in its growth and development.

This fact is even of greater importance in the case of the gastald than in that of the *dux*, because, on account of the elimination of the character of local ruler, which was indissolubly attached to the office of the latter, the gastald brought local affairs into direct relation with other parts of the social system of the kingdom, especially connecting them with the king or centre of the whole. Such a connection, as may be

inferred from what has just been said, while legally true, of course, of the whole *civitas*, had practically the effect of bringing the cities chiefly into relation with the rest of the Lombard constitution; and, consequently, some writers point to the office of gastald as the connecting link between municipal life and the new state life of the Teutonic system. This statement seems to me to be true except in so far as it makes the gastald the only connecting link. For we have already seen the *dux* holding the same relation, only in a less direct manner, owing to the intrusion of other interests belonging to his position; and we shall shortly have to consider the *scabinus*, another local officer, who, under Carlovingian rule, accomplished even more in this direction than the gastald. I do not wish to fail in appreciation of the important influence of this office in the development of the slowly growing idea of individuality in the cities of Lombardy, only to point out that it was not the only "connecting link" between the municipal units and the state as a whole.

In passing to a brief characterization of a few of the subordinate officers, I must not omit to mention the fact that the gastald had also certain military functions attached to his office. When called upon by the king he took command in the army, together with the minor officers who were under him in his jurisdiction, such as the *sculdahis, saltarius*,[1] etc. We have confirmation of this in the constitution "promotionis exercitus" of Lewis II.,[2] which says "ut nullum ab expeditione aut Comes aut Gastald, vel Ministri eorum excusatum habeant"; and in the life of Gregory II., Anastasius Bibliotecharius[3] tells that at the overthrow of the *castrum* of Cumae with the help of that pope, "Langobardos pene trecentos cum eorum Gastaldione interfecerunt." In military affairs the command held by the gastald seems to have been lower than that of the *dux*, the leader of all the troops fur-

[1] *Liutprand:* Leg. Lib. VI., Leg. 29. v. *Muratori:* Script. Rer. Ital., Tom. I., Pars II.

[2] *Muratori:* Ant. Ital. Diss. X., Vol. I., P. I., p. 121.

[3] *Muratori:* Script. Rer. Ital., Tom. III., p. 155A.

nished by the *civitas.* A right of appeal to the *dux* existed for the *exercitalis* who was oppressed by the gastald, as shown by the twenty-fourth law of Rhotaris,[1] which says: "Si Gastaldius exercitalem suum contra rationem molestaverit, *Dux* eum soletur." In a case of oppression by the *dux,* the gastald, on the other hand, could bring the matter before the king.

Before considering the changes introduced by the Carlovingian rule, let us cast a hasty glance at a few of the minor officers who acted as subordinates of the *judex* in administering the affairs of the *civitas.* As their relations to the urban portion of the Lombard kingdom, which is the special object of our study, were either slight in themselves or else so closely connected with those of their superiors as not to merit any particular description, I will merely mention the names of a few of them and indicate their duties. The officer who came next in rank to the *judex,* and who, in a subordinate capacity, assisted him especially in administering the judicial affairs of the *civitas,* was in Lombard times called the *sculdahis,* and in Carlovingian times the *centenarius.* Under him were the *saltarius* and the *decanus.* The *sculdahis* acted as a local officer under the *judex,* having limited judicial, police and military powers. His jurisdiction was confined to the small fortified towns and villages of the *civitas,* where he administered justice and collected fines, forfeitures, etc., in much the same manner as did the *judex* in the largest town of the *civitas;* his judgments, however, were not final, but always subject to appeal to a higher authority: "Si vero talis causa fuerit, quod ipse Sculdahis minime deliberare possit, dirigat ambas partes ad judicem suum."[2] There were several *sculdahis* in one *judiciaria,* and cases were often tried before more than one,[3] though each of the smaller local units

[1] Ed. *Rhotari:* Leg. 23 and 24. v. *Muratori:* op. cit., Tom. I., Pars II.

[2] *Liutprandi:* Leg. Lib. IV., 7.

[3] *Liutprand,* Leg. Lib. IV., 8, says: "Si homines de sub uno Judice, de duobus tamen Sculdahis causam habuerint, etc."

seems to have had such an officer. Paulus Diaconus[1] speaks of "elector loci illius, quem sculdahis lingua propria dicunt, vir nobilis," etc.

These rural divisions seem sometimes to have been called *sculdascia*, for we have a diploma of Berengar I., of the year 918, given to the monastery of Sta. Maria dell' Organo,[2] where is mentioned "pratum juris imperii nostri pertinens de Comitatu Veronensi, de Sculdascia videlicet, que Fluvium dicitur"; and in a document published by Ughelli,[3] in speaking of the bishops of Belluno, "Sculdascia Belluni" is used. In Frankish times the *centenarius* held the same position as the *sculdahis* of the Lombards: his jurisdiction was similarly limited to minor offences; all cases involving capital punishment, loss of liberty, or delivering of *res mancipii*, being handed over to the count's court according to the legislation of Charlemagne.[4] The *decani* and *saltarii* were subordinates of the *centenarii* and *sculdahis*. They both presided over smaller local divisions than the *sculdascia*, and acted as deputies. In the laws of Liutprand,[5] speaking of a runaway slave, we are told that "si in alia judiciaria inventus fuerit, tunc decanus aut saltarius, qui in loco ordinatus fuerit, comprehendere eum debeat et ad sculdahis suum perducat, et ipse sculdahis judici suo consignet." The *saltarius* seems to have been originally a sort of guardian of forests, "custos saltuum"[6] or "silvanus";[7] and the

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[1] *Paulus Diaconus:* De Gest. Lang., Lib. VI., 24.

[2] *Muratori:* Ant. Ital. Diss. X., Vol. I., Parte II., p. 116.

[3] *Ughelli:* Italia Sacra, Tom. V.

[4] *Caroli Magni*, Leg. Lomb. 36: "Ut nullus homo in Placito Centenarii neque ad mortem, neque ad libertatem suam amittendam, aut res reddendas vel mancipia judicetur. Sed ea omnium in praesentia Comitum, vel Missorum nostrorum, judicentur."

[5] *Liutprandi:* Leg. Lib. V., 15.

[6] Chronicon Fontanellense, Cap. I. v. *Muratori:* Ant. Ital. Diss. X., Vol. I., Parte I., p. 117.

[7] *Rachis*, a decree of—existing in the Monast. of Bobbio. v. *Muratori:* Ant. tal. Diss., Vol. I., Part I., p. 118 (Diss. X.).

name of the *decanus*, like the Frankish *centenarius*, is a survival of the old decimal division of the army and people. These minor officers, as well as other subalterns of the *judex*, are often met with under the common name of *actionarii*, which includes also the different sorts of *exactores*, *actores*, *advocati*, and all the lesser officials of the *fiscus*.

In the course of this investigation I have already referred to, and in a certain measure characterized, the changes introduced into the Lombard system of government consequent on the kingdom being absorbed into the great empire of Charlemagne. I have said that, owing to the similarity of institutions between the Franks and the Lombards, the changes made consisted rather in differences in the manner of enforcing the control of the central power than in any alteration in the institutional life of the people, but that there were certain exceptions to this general rule, which, in their mode of operation, though not in the intention of their author, materially affected, indeed greatly accelerated, the growth of individual life among the cities. We must now consider the nature of these exceptions.

Under the Lombard system we have seen the administrative unit of the state to be the *civitas*, with its administrative head, the *dux*, at different times enjoying a greater or less degree of independence from control of the central power. We have seen the *dux* lord as well as judge in his own jurisdiction, and standing as the successor of the military leader chosen by the people, instead of holding the position of king's servant; this place being more properly filled by the gastald, who cared for the fiscal interests of the central power, whose appointee he was. Such a form of government, it can be readily seen, left no room for any strong development of the principle of centralization, and no scope for the exercise of any decided power or even of general supervision by the central authority. The heads of the *civitates* were the king's *judices*, it is true, and assembled to assist him in judgments at his general *placita* in the March of each year; but they

bear the character also of local lords of no mean importance, and in some cases possessed of no inconsiderable amount of power. Such a degree of individual influence—perhaps I should exaggerate if I called it individual independence—was, however, little suited to the idea of a universal centralized empire, which was the forming principle of the government of Charlemagne. While recognizing the necessity of retaining the fundamental institution of a division of the state into *civitates*, and of governing it by means of the heads of these divisions, he wished to eliminate from these officers all the characteristics of local magnates, and to reduce them to the more easily controlled position of servants and dependents of the king. This object he accomplished most satisfactorily by changing the dukes or local lords into counts or king's men, by appointing a Count of the Palace for Italy, and by extending to that kingdom the perfectly organized system of central control by means of the *Missi Dominici*, with the workings of which in the other parts of his great empire the student of history is too well acquainted to need any description here.

The immediate changes in the life of the people consequent on the introduction of this system were not considerable, if we except a great improvement in public order and a marked advance in the equitable administration of justice; but it needs no great foresight to see that the ultimate effects on the position held by the municipal units in the community could not fail to be important and far-reaching. The new officer, the count, stripped of all the importance that his predecessor, the duke, had enjoyed as lord of the country over which he ruled, was placed in each city to govern, in the king's name, it and its *territorium*. As long as the empire of Charlemagne retained its integrity, and as long as the reins of central government were held by a strong hand and the control it exercised was felt to be positive and real, the change in the character of the local governor was of little moment; but as soon as the power of the central government weakened—during the

inglorious reigns of the immediate successors of the great emperor—its hold on the administration of the local units slackened immediately; and in proportion as the vitality of the new central control diminishes, we see appearing the effects which must always result when the strong hand of an active central power is removed from a system of administration which had been based on the exercise of such a power. These effects are the increased importance—I may now say the increased independence—of the local units; of these local units themselves as distinguished from the heads who rule over them.

The change had made these units more organic parts of the state than they had ever been before: we have seen them first made prominent by being the seats of the rulers of the *civitas*, and now we are to see them gain a more significant advance by coming into relation with the head of the state directly, instead of through the personal power of their lord. For the local ruler has yielded his individual pre-eminence to the central government; and when this fails to maintain its authority, in any community whose inhabitants are capable of fostering the seeds of independence once sown, it is difficult if not impossible for a successor to repossess himself of the privileges which have been forfeited. In any state where the seat of central authority is distant or its power only exercised feebly and at intervals, the local units secure much greater independence and importance, through the very necessity of performing many functions left unheeded by the ruler of all; and if the people are self-reliant in character, they will in time develop a sort of self-government which, although it would not at first think of questioning the theoretical right and overlordship of the central power, will eventually brook but little interference with its modes of procedure and with its exercise of functions, which the lapse of time has transformed from enforced duties into jealously guarded privileges.

This is the keynote of the later history of the Italian cities.

This it was, and not any real lack of patriotism, which made them choose a German emperor instead of an Italian king. There was no room at that time for the idea of Italian unity, as we now understand it: the nature of the people alone would have rendered such a thing impossible, even if we leave out of account the fact that Italy was the meeting-ground of the two great powers of the mediæval world, the Pope and the Emperor. Italy then must have had two masters, or have been the slave of one. The same spirit of civic independence which caused the development of Ancient Greece by preventing the universal rule of one power, caused the Italians, under different conditions, to pit one master against another to attain the same end. Even Liutprand, the old historian of the tenth century, recognized this. In the first book of his "Historia" he says: "The Italians wish always to serve two masters, in order to restrain one by means of the terror with which the other inspires him."[1] By means of holding in their hands the balance of power they hoped to rule their rulers; and to attain this object was the only reason which ever prompted the cities to unite with any degree of harmony. Local independence was what they aimed at, and their shrewdness showed them the only possible means in that age of securing it.

These results could hardly have been attained if society had remained such that the prominence of the local divisions was dependent on the prominence of the respective heads of these divisions; but the character of their local rulers once changed, and their powers in a great measure absorbed by the act of a strong central power, when that power fell to pieces it was much easier for the local divisions, as such, to increase their independence, and to utilize the advance they had made, by means of their more direct relation to the central power, to gain a position which they would enjoy in

[1] *Liutprandi Ticinensis:* Historia, Lib. I., cap. 10. v. *Muratori:* Script. Rer. Ital. II., p. 431. *Pertz*, Monum.; Script., Tom. III.

spite of the efforts alike of that power and of their old rulers. Such a position would not be reached except by means of great struggles and by passing through a period of great disintegration and of fierce internal strife between opposing factions, such as in the history of the Italian communes is represented by the dark period between the fall of the last of the Carlovingians and the election of the first German emperor as king of Italy; but once attained, the character of the people who accomplished it would ensure its permanence, as long as they retained those principles of independence which had made them victorious in the struggle. After this short discussion, in which we have traced the ultimate effects of the action of Charlemagne in changing the dukes into counts, let us look at another feature in the field of city government introduced by him, the new office of the *scabinus* or city judge.

According to the theory of judicial procedure among the Teutonic nations, judgment in criminal cases was given in the open court or *placitum*, where, besides the regular judges, all or any of the freemen within its jurisdiction were supposed to concur in the judgment and sentence. How far this method of arriving at judicial decisions was carried out in practice depended largely on custom and other local influences, and consequently varied greatly in different countries and with different nations. I do not propose to enter into the discussion[1] of the existence of these "judicators"[2] in Lombardy in the eighth century, but will only say that it is

[1] The opposite sides of the question are ably presented by *Savigny:* Geschichte des Röm. Rechts, etc., Vol. I., p. 230 et seq. (trans.), and *Hegel:* Städteverfassung v. Italien, etc., I., page 470, note.

[2] It is difficult to find an English word which intelligently renders the various names for these freemen in their judicial capacity, used by the different nations, such as *arimanni, rachinburgi, boni homines*, etc. Most English writers make use of the German word *schöppen*. I have taken the rendering "judicators" from Edward Cathcart, the translator of the first volume of Savigny's Geschichte des Römischen Rechts im Mittelalter.

certain that before the Frankish conquest there did not exist a class of men whose business it was to assist the judge in disposing of cases. If through ignorance of the law or for other reasons he was unable to come to a decision, "si vero talis causa fuit, quod ipse . . . deliberare minime possit,"[1] he could call some of the freemen to assist him: "advocis [advocet] alios . . . qui sciunt judicare,"[2] etc., but this seems, in later times at any rate, to have been a privilege to be used at discretion, and the persons summoned were not regularly appointed officers of the court. The Lombard codes are silent with regard to these judicators; but Savigny,[3] in his argument to prove their existence, claims that mention is made of them in two decisions of Liutprand of the years 715 and 716, and brings as additional evidence a *placitum* of 751[4] in which Lupo, duke of Spoleto, gives judgment "una cum judicibus nostris . . . vel aliis pluribus astantibus," etc. It is of more importance for us, however, to determine the reasons for the introduction into Italy by Charlemagne of the new office of the *scabinus*, than to lose ourselves in a complicated discussion of the theoretical predecessors of these officers.

The introduction of this new feature into city government seems to have been the result of an attempt to correct certain abuses in the exercise of power by the duke or head of the courts of the *civitas*. The duke had the right, as we know, to summon all the freemen in his jurisdiction to his *placita*, and to fine them according to the law if they failed to answer his summons. The fines collected in this manner formed a substantial part of the revenues of the *judex* imposing them, and consequently arose the abuse, which seems to have been

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[1] *Liutprandi:* Leg. 25, Lib. IV., 7.

[2] *Ruchis:* Leg. No. 11.

[3] *Savigny:* Geschichte, etc., Vol. I., p. 233, trans.

[4] Preserved in the Archives of Farfa. Published by: *Mabillon:* Annales Ord. S. Benedicti, Tom. II., p. 154. *Muratori:* Script. Rer. Ital., Tom. II., Pars II., p. 341.

a great cause of complaint in the eighth century, that the freemen were summoned to attend *placita* at frequent intervals during the year, when there was no business of any importance to transact, and when the sole object of the summons was to furnish an excuse for imposing the fine. An attempt to remedy this injustice was made when the number of *placita* which any one *judex* could hold during the year was limited by law to three,[1] and the dates for these definitely determined.. But the abuse does not seem to have been satisfactorily corrected till the time when Charlemagne formally substituted for the body of the freemen, who in theory were supposed to attend the *placita* and assist in the judgments, a limited number of men who, as regularly constituted judges, either assisted the *judices* or made judgments of their own, as the case might be. These officers were the *scabini*, whose position we are now investigating.

All of the best authorities agree that no authentic allusion to the office in Italy is to be found prior to the establishment of Frankish rule. The word *scavinus* or *scabinus* sometimes occurs, but in every case the document containing it has been proved spurious on other grounds. For instance, Brunetti[2] publishes a donation of the bishop Speciosus of Florence, to the monastery of the cathedral, purporting to belong to the year 724, in which a certain "Alfuso scavino" is mentioned; but it has been proved that the monastery was only founded in the year 760, and though it may, at a later date, have received the donation, the sig-

[1] We have confirmation of this from a document of the early part of the ninth century, which says: "De Vicariis et Centenariis qui magis propter cupiditatem quam propter justitiam faciendam saepissime placita tenent, et exinde populum minus affligunt, ita teneatur . . . ut videlicet in anno tria solummodo generalia placita observent et nullos eos amplius placita observare compellat." From Worms Capitulary of *Lewis the Debonnair*, a. 829, c. 5. Also compare: Capit. V., anni 819, Art. 14. Capit., Lib. IV., c. 57. (*Baluzii*, 616 infr., 788 supr.) *Caroli Magni*, Leg. Long. 69. (*Canciani* I., 157.)

[2] *Brunetti:* Cod. Diplom. Toscan. Doc. No. 18.

nificancy of the use of the term vanishes. The first authenticated use of the name of the new judge seems to be in a *placitum* of Charlemagne of the year 781.[1] In this the parties to a suit are mentioned as having already appeared before the "Comitem et suos Escapinios." Eight years later, in a *Praeceptum* of Charlemagne,[2] commission is given to the *comes* Tentmann "superque vicarios et Scabinos, quos sub se habet, diligenter inquirat."

Now that we have indicated the origin and noted the first appearance of the new officer, let us examine his position and his duties. I am much more willing to allow to the *scabinus* the title of "city officer," than to the *dux* or even the count. We have seen the latter as one of the important connecting links joining the city to the state, bringing the city into relationship with the constitution of the kingdom and making it a part of it; but we have been unwilling to call the count or *dux* the *legal* head of the city, as such, that is to allow him the title of the first city officer. But with the *scabinus* the case is different. His mode of appointment, and the character of the functions he performed, ally him with the city proper and with city people. His duties and his interests were more confined to the city than those of any of the other judges, and when he accompanies the count to the general *placita* of the king, he seems to go in the capacity of a representative of the city, and more in the character of a city magistrate than any officer we have yet considered. His duties were almost entirely of a judicial character, and his powers seem to have been as broad in their extent as those of the other judges. That he had the power of imposing capital punishment, and that the other officers of the law could not change but only execute his orders, appears from the following passage:[3] "postquam Scabini cum [latronem]

[1] *Bouquet:* Rerum Gallicarum et Francicarum Scriptores.

[2] *Baluzii:* Capit. Reg. Franc. a. 789, Tom. V., p. 746.

[3] Capit. I., Art. 13, anni 813. v. *Baluzii:* Capit. Reg. Franc., Tom. I., p. 509.

adjudicaverint, non est licentia vel Vicarii ei vitam concedere." Muratori[1] maintains that he also had the right of holding certain *placita* of his own, and cites in proof two *placita* of Lucca of the years 847 and 856, where we find: "Dum nos in Dei nomine Ardo, Adelperto et Gherimundo Scabini adsedentes in lucho Civitate Lucana," etc.; and "dum resedisset Gisulfus Scabinus de Vico Laceses, per jussionem Bernardi Comiti . . . ubi cum ipso aderat Ausprand et Audibert Scavinis." In the first of these there is no mention whatever of the count, and in the second "Gisulfus Scabinus" acts with his associate *scabini* "per jussionem Comiti." But even if we allow to the *scabini* the right of holding *placita*, these must have been of a lower grade than those of the counts or of the *missi regii;* for to the *mallum* of the latter an appeal was allowed from the judgment of the *scabini*, as we see from the law of Charlemagne,[2] which says that: "Si quis caussam judicatam repetere in mallo praesumserit . . . a Scabinis, qui caussam ipsam prius judicaverint, accipiat." Generally speaking, however, it seems probable that their jurisdiction included all cases arising within the city limits, which could be dealt with in the regular *placita* of the counts, and which were not of sufficient importance to be referred to the king in person, his representative the Count of the Palace, or his delegates the *missi regii.*

When the count went up to the general yearly *placitum* of the king, as the representative of the *civitas*, according to the laws of Charlemagne he was to be accompanied by a certain number of the *scabini;* and these seem to have accompanied him not solely in the character of legal advisers, but also in a certain measure as representatives of the cities in which lay their jurisdiction: they are by no means what the exaggeration of Sismondi[3] calls "des magistrats populaires . . .

[1] *Muratori:* Ant. Ital. Diss. X., Vol. I., Pars I., p. 115.
[2] *Caroli Magni:* Leg. Long. No. 92.
[3] *Sismondi:* Rep. Ital. du Moyen Age, Vol. I., p. 268.

qui representaient la bourgeoisie"; but they certainly stood for the interests of the people, in a greater degree than any of the ruling powers we have as yet considered. Their number is variously stated in the laws of different kings, and their actual number seems seldom to have come up to the standard of legal requirement. Lewis the Pious requires twelve to accompany each count when summoned by the emperor: "veniat unusquisque Comes et adducat secum duodecim Scabinos";[1] but concedes that if so many could not be found in the city, their number should be filled out from the best citizens of the town: "de melioribus hominibus illius civitatis suppleat numerum duodenarium."[2] According to Charlemagne,[3] no one should come with the count to a king's *placitum* unless he had a case to present, "qui causam suam quaerit, exceptis scabinis septem, qui ad omnia Placita esse debent." And again: "Ut nullus ad placitum banniatur . . . exceptis scabineis septem, qui ad omnia Placita praeesse debent";[4] and seven seems to have been the usual number expected, and their attendance was compulsory; though sometimes only two appear, and in a few cases none at all.

Of all matters relating to this office, the one which is of most interest to us, and the one which most clearly shows the difference which was designed to exist between it and that of the other judges, was the manner in which the office was obtained. In this procedure we can trace almost distinctly that the object of the central power which established it was to secure greater justice and greater freedom to the subjects who came under its jurisdiction. The fact was recognized by the new government that the power of the local heads was too great to suit the principle of universal central control,

[1] Capit. II., anni 819, Art. 2. v. *Baluzii:* Capit. Reg. Franc., Tom. I., p. 605.

[2] Loc. cit. sup.

[3] *Caroli Magni:* Leg. Long. No. 116.

[4] *Caroli Magni:* Cap. Minora, anni 803, c. 20.

which was the keynote of Charlemagne's system of administration, and was exercised in too arbitrary a manner; and that some check was necessary to curb the spirit and limit the independence of these local lords of the soil and the city who had little consideration for their inferiors, and who might at any time become a source of danger to their superiors. Such a check was found, in regard to the central authority, in the *missi regii*, and in reference to the general public, in the *scabini* or city judges.

In the old Lombard constitution we have seen the gastald, chiefly, however, in the matter of judicial decisions, exercise a controlling influence on the arbitrary action of the duke; but as the power of the count varied from that of the duke, so that of the *scabinus* differs from that of the gastald, only perhaps in a greater degree. At the time when the count assumes the place of his predecessor the duke, the *scabinus* displaces the gastald, although he cannot be said to have assumed exactly the same position as the latter, nor to have filled it in precisely the same way. The *scabinus* did not have, of course, any direct limiting control over the actions of the count; for any such power in the hands of a body of lesser officers would have been alike contrary to the spirit of feudalism which characterized the age, and impossible to its forms; but being the principal judicial functionaries of the district, into their hands fell most of the cases which formerly went to the *placita* of the count; and while the wish of the great emperor, that even the meanest subject of the realm should receive impartial justice at their hands, might have failed in its effect, its fulfilment was made more sure by the method prescribed for the election of the officers whose duty it was to execute it.[1]

In describing the method by which the *scabini* gained their office, I am in some doubt as to the proper terms to be

[1] "Adjutores Comitum, qui meliores, et veraciores inveniri possunt." *Lothar I.:* Leg. No. 49. v. *Muratori:* Ant. Ital. Diss. X., Vol. I., Parte I., p. 112.

employed. I have just made use of the word "election," but cannot let it stand without some qualification. It was not an election in the strict sense of the word as we now understand it, but it was as near an approach to a popular choice as was possible in the age in which it existed. The citizens of a municipality did not nominate and elect by their votes a popular magistrate, as some writers would have us believe; for such a proceeding would have been an anomaly in the eighth century under the rule of a Frankish emperor. But the people had a voice, and from the frequent mention of their intervention it would seem an important voice, in the selection of those who were to be their judges, and who were to assist in representing them in the royal assembly. The original appointments were made by some higher power, in most cases the *missi regii*, the direct representatives of the king; but these were made not arbitrarily, but always "cum totius populi consensu." This was the important point; it was so far a popular office that the free consent of the people was always necessary to make valid the appointment of any incumbent. According to the ideas and customs of the eighth century, such a method of procedure would represent a fairly popular election; for we know well that in the times of the greatest freedom, the Teutonic idea of a popular vote never went beyond the mere expression of assent or dissent by the assembled freemen. The initiative was always left to the king or chief who conducted the meeting, just as much as it was in the ancient assembly held on the classic plains of Troy.

In a capitulary[1] of Charlemagne of the year 809 it is decreed: "ut Scabini boni et veraces cum Comite et populo elegantur et constituantur": and more specific directions are given by Lothar I. in the year 873, in case of a *scabinus* found to be an unjust judge. He says:[2] "ut Missi Nostri

[1] *Caroli Magni:* Capit. I., anni 809, Art. 22. v. *Baluzii:* Capit. Reg. Franc. I., 466 infr.

[2] *Lothar I.:* Capit. anni 873, Art. 9. v. *Baluzii:* Capit. Reg. Franc. Tom. II., p. 232. Leg. No. 48. v. *Muratori:* Diss. X., Vol. I., P. I., p. 112.

ubicumque malos scabinos invenerint ejiciant, et totius populi consensu in loco eorum bonos eligant." From this latter example we see that the *missi* had the power of dismissal "for cause," as well as of nomination. In fact, the king and his ministers, in the interests of impartial justice, kept constant watch on the acts and judgments of the *scabini*, and a law of Lothar I. tells us that "quicumque de Scabinis deprehensus fuerit propter munera, aut propter amicitam injuste judicare" should be sent up to the king to render an account of the manner in which he had fulfilled the duties of his office.

Such then were the duties, the privileges and the restrictions of the first magistrate to whom we could venture to ascribe any of the attributes of a popular judge: a representative of the people at the assembly of their ruler; a judge of their suits and of their misdoings at home, and a check on the arbitrary power of their lord and feudal superior,—we can readily appreciate that the existence of such an officer within the city must have exercised some influence in giving to its inhabitants a greater sense of security, and consequently of importance, even if we cannot claim that in the earliest stages of municipal development it gave birth to any definite ideas of personal freedom or of municipal independence. But it can easily be seen that it formed another and an important factor in that idea whose progress we wish to trace, of a slowly growing feeling of individuality in the city as such, the municipal unit as conceived apart from the still legally recognized unit, the entire *civitas*. We have seen the count the representative of this idea as far as its actual connection with the constitution of the state was concerned, but it was the *scabinus* who was to represent it to the consciousness of the people, and to assist them in rediscovering the lost conception of a municipal unity.

It would be incomplete to conclude this account of the various officers of government, without some mention of the position held by the bishops at this period. As it has been

our duty throughout this paper to study the municipalities of Italy as only preparing to assume a position of individuality eventually leading to independence, so it is with regard to the bishops. While their social influence, as pointed out in the first part of this paper, was always notable, their political power, which formed one of the important steps in the progress of the communes towards a separate existence, has its birth at a time which is beyond the limits of this investigation. Not until the overthrow of the Carlovingian dynasty left Italy the prey of contending factions, and the crown passing quickly from hand to hand made each applicant anxious to gain the support of the more prominent electors, did the bishops obtain that legally constituted political power which, by breaking up and in many cases destroying the rule of the counts and great nobles in the cities, was the means of bridging over the wide gulf which lay between the idea of a district under the almost absolute rule of a great lord, and a civic autonomy governed by its own independent citizens. Even, however, if we are not yet to portray the bishop in a position of high political importance, we may briefly consider his social power and influence, and, as we have done with the cities themselves, indicate the steps by which he was enabled ultimately to gain such an exalted position.

The relations of the bishop to the inhabitants of the cities during the period we are considering were pretty nearly such as described in the first part of this paper. He stood forth as protector of the weak and the oppressed; as mediator between an unfortunate prisoner and an unjust judge who was seeking his private interest rather than following the spirit of impartial justice; or between a downtrodden vassal and the almost unlimited power of his feudal superior. He lessened the severity of harsh judgments, he protested the imposition of unjust fines and penalties. In very many cases he was even appointed by the king or his representatives as co-judge to assist the *judex* or the *missus* in hearing cases

where oppression or injustice was to be feared. But it is important for us to avoid confusing this kind of jurisdiction with that which he enjoyed in the century after he had attained the power and the office of count, and had combined the religious functions of head of the diocese with the secular ones of political ruler of the city. Any judicial authority possessed by the bishop at this earlier period was not in virtue of any political position he himself held, but came to him entirely in what might be called an extraordinary manner, that is, by delegation from the king, for definite specified occasions. As an example of this extraordinary delegated jurisdiction, I will refer to a document in the Archivio of the Canons of Arezzo[1] of the year 833, relating to the judgment of a dispute between "Petrum Episcopum Arretinum et Vigilium Abatem Monasterii Sancti Antemi," situated in the territory of Chiusi, over a privilege ceded to that monastery by Lewis the Pious in 813.[2] The bishop of Arezzo gained a favorable decision from a court constituted of some *judices, missi* of the emperor, and of the bishops of Florence, Volterra and Siena, Agiprandus, Petrus and Anastasius. According to the terms of the document with regard to the composition of this court, the bishops sitting in it were "directi a Hlotario magno Imperatore"; and their powers are several times referred to as being "juxta jussionem et Indiculum Domni Imperatoris." Here, as in all other similar cases, we see plainly that there is no indication of any purely personal jurisdiction.

That the influence of the bishop in affairs of state at this period was only of an individual, extra-official character can be seen also from the fact that the king considered the bishops themselves to be under his judicial jurisdiction in all secular matters, just as the lesser clergy came under the juris-

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[1] *Muratori:* Ant. Ital. Diss. LXXVII., Tom. III., Parte II., p. 189.

[2] Vid. *Tommasio:* Historia sanese, Lib. IV.; *Ughelli:* Italia Sacra, Tom. III., for this privilege.

diction of the *judices:*[1] and further, that after the election to a church, the decision of the *judex* must confirm the choice of the community in order to render it valid.[2] All disputes also between bishops and their clergy, between members of the body of clergy, and between these and members of the laity, were settled by the royal authority;[3] and what is most significant, there was a universal and freely used right of appeal for the clergy or laity from the decision of a bishop to the person of the king, who seems to have exhibited no hesitation in modifying or reversing sentences, even in matters relating to purely clerical discipline.[4]

Even in the time of the Franks, when the consideration shown to the church and its representatives was much greater than under any of the Lombard kings, we find Charlemagne,[5] on suspicion of infidelity to his government, having sent to him and retaining as prisoners the bishops "Civitatis Pisanae seu Leucanae" and Pottoni, Abbot of the monastery of Volturno; and Lewis the Pious[6] sends into exile "Ermoldo Nigello Abatis," and in the year 818 several other bishops, including Anselmus "Mediolanensis Archiepiscopus," "Wolfoldus Cremonensis" and "Theodolphus Amelianensis."[7] None of these restrictions and limitations, however, although

[1] *Brunetti:* Cod. Diplom. Toscan. No. 8, a. 715. A priest named Gunthram says: "Nec cumquam ab episcopum Senensem condicionem habuimus, nisi, si de seculares causas nobis oppressio fiebat, veniebamus ad judicem Senensem, eo quod in ejus territorio sedebamus."

[2] *Brunetti:* Cod. Diplom. Toscan. No. 8, a. 715. Germanus, a deacon, says: "Quoniam prelectus a plebe, cum epistola Warnefried [the Gastald of Siena] rogaturus ambulavi ad Luperceanum Aretine Ecclesie Episcopum et per eum consecratus sum."

[3] For example see a judgment of the year 771, in the Archivio of Lucca. For which vid. *Muratori:* Ant. Ital. Diss. LXX., Tom. III., P. II., p. 184.

[4] Good illustrations of all these statements are to be found in two documents in the Archivio Archivescovile of Lucca, of about the year 813. Vid. *Muratori:* Ant. Ital. Diss. LXX., Tom. III., Parte II., p. 184.

[5] Codex Carolinus—*Adriani I.*, Epist. Nos. LV., LXXIX., LXXII., L.

[6] *Ermoldi Nigelli:* Poema. v. *Muratori:* Script. Rer. Ital., Tom. II., Pars II.

[7] *Muratori:* Ant. Ital. Diss. LXX., Vol. III., Parte II., p. 188.

they arose chiefly from the strong opposition always existing between the local temporal rulers of the people and their spiritual rulers, could hinder the bishops from occupying that important position of mediators and of protectors of the people which we have ascribed to them.

Turning now to a consideration of the earliest steps which may be said to have cleared the way for the political power of the bishops, we are met by a subject which, though of great interest in itself, is not sufficiently a part of this investigation for us to do more than indicate the lines of its progress. This subject is the development of the practice of giving certain immunities and privileges to churches and monasteries, adopted by the Frankish kings, faithful sons of the church, and then followed by all their royal and imperial successors. In considering the important influence exercised by these immunities on the development of the espiscopal power and the effects of this on the growth of the communes, there are two essential facts which we must always keep prominently in mind. In the first place we must remember that the granting of immunities was a question of privilege to particular individuals or ecclesiastical institutions, and not a universal grant which affected in an equal degree all the dioceses of the realm. This led to the marked differences in rank and importance which existed between the various bishopries, and in the tenth century, when the temporal power became in many cases an adjunct to the spiritual, caused some bishops to become powerful temporal princes, while others, unable to gain this pre-eminence, remained simply spiritual heads of their respective dioceses. So in the contest between the counts and the bishops we find the latter only victorious in certain cases, and consequently having only certain of the cities under their jurisdiction; a fact which is illustrated as late as the Peace of Constance, where in the ninth article the cities are still divided into episcopal and non-episcopal cities.[1] In the second place we must keep

[1] *Pertz:* Monum. German., Tom. IV., p. 176.

clearly before us an important fact, the truth of which any chronological account of the development of the principle of immunity would easily demonstrate, namely, that with the advance of time and with the growth of that principle, the changes which took place in the different sorts of immunities were not simply those of degree, but essentially and principally those of *kind*.

A descendant of Charlemagne may have granted to some monastery or bishopric a greater alleviation of some of the fiscal burdens borne by it under his immediate predecessor, but a successor of Berenger when he granted a *privilegium* did not simply perform the negative benefit of alleviating burdens; he endowed the head of the bishopric—probably in return for some service he had received at his hands or expected to receive—with the positive benefit of the political headship and possession of some city or district of a former count. I mean by this that the earlier immunities—and in these are included all given during the period we are discussing—were all of them what are termed simple or ordinary immunities; that is, those which deal with exemption—whether from burdens for which the receivers would otherwise be liable, or from jurisdiction to which they would otherwise have been subjected—of what may properly be called the private possessions of the churches concerned. They had nothing to do with the privileges of a later time, by which a power to exact burdens was granted and a positive jurisdiction over others allowed: that is, public functions bestowed rather than private rights conceded.

That a distinction of such a character was a difference of kind and not of degree is so plainly apparent that it is unnecessary to dwell longer upon it, and it only remains for us to consider briefly the chronology of some of the changes that took place. If we adhere strictly to the proper signification of the terms used, the development can be somewhat succinctly described by the simple enumeration of the three characteristic features of its progress, viz. *protection, exemp-*

tion, privilege that is jurisdiction or temporal power; and the three periods which are covered respectively by the prominence of these ideas can be roughly stated to be: for the first, the reigns of Charlemagne and his successors down to the time of Charles the Bald—including any indication of this idea which we may find during the reigns of the last rulers of the first Lombard kingdom; for the second, the reigns of Charles the Bald, Karloman, and Charles the Fat; and for the third, the full development of the episcopal power in the tenth century, down to the period of its final decline, and the rise of actual municipal government within the communes.

It is doubtful whether immunities of any importance were granted even by the latest kings of the Lombards, before the invasion of the Franks. Under the first Lombard monarchy the church held a very subordinate position with regard to the state, and if privileges were granted to any of its members, they had attached to them no greater meaning than the simple extension to them of the *mundibrium* of the king, such as was often allowed to private individuals; that is, they were simply grants of royal protection, and were not similar to the later grants which included both protection and privilege.[1]

With the advent of Frankish rule under Charlemagne, marked consideration immediately appears for the church and its representatives. Not alone is ample protection granted to many of the churches of the kingdom, but to it is added the

[1] It is true that *Muratori* (Script. Rer. Ital., Tom. I., Pars II., p. 192) publishes a diploma to the monastery of Novantulanum, near Modena, purporting to be by Aistulf and of the year 753; and (in Ant. Ital. Diss. LXXI., Vol. III., P. II., p. 256) another by Desiderius to the monastery of Santa Giulia di Brescia, which seems to grant exemption and protection if not privilege. But in the first the formula employed is so exactly similar to that of the later Frankish documents issued for the same purpose, as immediately to excite suspicion; and in the second, Muratori himself finds something radically wrong with the chronology.

important function of exemption. The greatest evil endured in those days by the ecclesiastical authorities was exactions levied on their property and oppression exercised on their dependents by the dukes and counts under whose jurisdiction lay the temporal possessions of the churches and monasteries. Consequently the aim of every bishop and of every abbot was to obtain for the possessions of his diocese or his convent an exemption more or less complete from the civil administration of the neighboring secular ruler. For a long time there was no thought in the mind of the bishop of gaining for himself the functions of temporal jurisdiction, but simply that the power of the count should be restrained with regard to church property, that is, that he should not be able to exercise his judicial control over lands belonging to the church, except by the express permission, "per licentia data," and with the concurrence of the bishop himself. This and nothing more is what is meant by all of the charters of exemption granted by the Carlovingian rulers, down to the time of Charles the Bald, when, as we shall presently see, a change was introduced.

It would be useless for me to cite examples of such charters, for their number is countless, and reference may be made to any of the great collections of mediæval documents for confirmation of what has just been said; for during the reigns of the earlier Carlovingians, the strong reverence for the church and respect for its officers which characterized the Frankish nation from the beginning led to the extension of these privileges to much the greater number of the churches in the realm. Not all churches enjoyed such grants, and not all those accorded were of the same liberal character, but the number given and the amount of liberty to the church thereby bestowed was sufficient to give to the clergy that degree of importance which ultimately culminated in making them the great lords that we find them in the tenth century. To give an idea of the tenor of these documents, I will, however, quote a few lines from the earliest one that has come

under my notice in Carlovingian times, namely a diploma of the year 782, issued to Geminiano II., bishop of Modena, and preserved in the archives of that city. Here we find that: "Nullus judex publicus ad causas audiendum, vel freda exigendum, seu mansiones aut paratas faciendum, nec fidejussiones tollendum neque hominibus ipsius episcopatus distringendum," etc. This is sufficient to show the character of exemption from secular jurisdiction.[1]

The next forward step in the advance of the bishops to temporal power was made probably about the time of Charles the Bald; though under his two immediate predecessors, Lothaire[2] and Lewis II.,[3] we already see indications of an extension of the quality of exemption to include freedom from the payment of all public dues and the bearing of all public burdens.[4] It was precisely the introduction of this element of exemption from public burdens which marked the change in the nature of the immunities granted from the time of Charles the Bald, down to the period when the element of jurisdiction and real temporal power was introduced under Guido and Berenger. Up to this time, the grounds on which similar charters had been sought had been protection from the oppression of the counts, and had resulted, as we have seen, in the granting of simple charters of protection which were of no very great significance. But now it is exemption from public burdens, etc., that is made

[1] An even better example can be found among Charlemagne's diplomas, by referring to one granted by him to the church of Reggio, and published by *Ughelli:* Italia Sacra, Tom. V., Appendice.

[2] See a charter given by Lothaire to Pietro, bishop of Arezzo in 843, the year of the Treaty of Verdun. v. *Muratori:* Ant. Ital. Diss. LXX., Vol. III., Parte II., p. 196.

[3] See a law of Lewis II. of 855, made in the Diet of Pavia. v. *Muratori:* Script. Rer. Ital., Tom I., P. II. (added to Leg. Lomb.).

[4] Certain "dona," however, supposed to be voluntary, were always excepted. See a diploma of Louis of the year 854 to the monastery of St. Gall in Germany, where it describes the usual "dona" for *all* monasteries as "Caballi duo cum scuteis et lanceis." v. *Muratori:* Ant. Ital. Diss. LXX., Vol. II., Part II., p. 204.

prominent, in addition to a complete severance from all jurisdiction and control of the secular power of the *civitas* in which the bishop's see and domains are situated. That this concession also was sought by the bishop on the plea of protection for his dependents from oppression and exaction, does not diminish its importance; for it is easy to see that the line which separates recognized right of protection from recognized right of jurisdiction is one easily effaced, and defense from the tyranny of a foreign power can with little difficulty be transformed into domination by the professed defender.

That this was the order of development consequent on these changes is proved by the temporal dominion gained by the bishops in the next century; and the steps of its growth marked by numerous immunities granted by Charles the Bald, Karloman[1] his successor, and Charles the Fat, the last of the Carlovingians in Italy. As a good example of the complete development of this advance gained by the bishops, I will mention a charter given by Charles the Fat to John, bishop of Arezzo, in the year 879, in which he confirms to him all the property and the rights of that see, and takes him under his protection, "sub immunitatis suae defensione": he then goes on to explain what this term meant, giving a full account of the extent to which a bishop's property was exempted from the jurisdiction of the *judex publicus*, and protected from the imposition of burdens and exactions.[2]

The next step in the growth of the episcopal power, and the most important of all, is the progress from exemption to privilege, to jurisdiction; and occurs after the return of the kingship of Italy to the hands of native kings.[3] It means

[1] See a *privilegium* given by him in the year 877 to the nuns of the Posterla, Sta. Teodata at Pavia. v. *Ughelli:* Italia Sacra, Tom. V.

[2] *Muratori:* Ant. Ital. Diss. LXX., Vol. III., Parte II., pp. 196, 197.

[3] Probably the earliest of such privileges was one granted to the bishop of Modena by Guido in the year 892, and published by *Ughelli:* Italia Sacra, Tom. II., p. 98.

the full development of the bishop into the temporal ruler, and as such belongs properly to the history of the tenth century, and consequently is beyond the limits of the present paper.

We have now considered individually and separately, in the course of their development, the different elements which, when combined and modified by the various changes described, contributed to form the solid foundation upon which the fabric of the future independent life of the cities was to be built. We have been dealing exclusively with institutions, and the manner in which their growth has been accomplished. For it is in the institutional life of a people, and in the change and development it undergoes, that are to be found those elements which form the basis for all future changes, whether simply in the form of its government or in the structure of its social system. If once a clear picture is gained of the structural parts which form the institutional framework of any particular development, and a truthful presentation of these forming principles is proved and established, a detailed account of the material expression of them is a matter of secondary importance.

I have not, in this paper, attempted to describe the actual condition of any particular municipality, or even presented a picture which could represent the material existence of the cities as a whole. Such a picture would only be a necessary part of a study of institutions when the city itself was the unit to be investigated, and not of one whose chief object is to prove that the city as such had no constitutional existence, but simply formed a part of another institutional unit. When we reach a period in which the city stands out as an object of study in itself, and when we do not have to trace its history only by learning that of other institutions which included and overshadowed it, then the practical life of the people within its walls becomes of the greatest importance, even to the smallest detail of civic law or city custom; and then, and not till then, begins what could properly be called a study of municipal institutions.

During the three centuries that we have been investigating, the study of the Italian municipalities has been, as we have seen, but the study of other institutions of which the municipality formed only a part. No attempt has been made to do more than prove the origin and trace the earliest development of those principles, which in their maturity were to gain for the municipal unit that position where the study of its own structure would become an object of interest, entirely apart and distinct from any of its surroundings. It has been shown that the city did not inherit any such position from its immediate predecessor the Roman *municipium*, which we have learnt to consider as overthrown, from a constitutional standpoint as annihilated; but that the new principle introduced into state life by the northern conquerors of Italy, the principle of administration by county rather than by urban divisions, relegated the city to an inferior place as part of a rural holding, instead of leaving it the centre of a circle of rural dependencies. Having demonstrated the absence of all constitutional recognition of the municipal unit as such, I have attempted to show how a condition of such legal insignificance became generally a condition of actual importance; how from a position of such negative interest, the advance of the city was commenced along a road which was ultimately to restore it its old pre-eminence, even adding to this in time the almost forgotten attribute of sovereignty. The motives for this advance we have seen to be no higher ones than convenience and expediency, which made the *urbs* of every *civitas* the natural centre of its local administration, thereby in fact, if in no way by law, restoring to it some of the elements of individuality, if not of pre-eminence, which it had lost. The means employed we have seen to be the functions of the various officers of state: the *dux*, the count and the gastald, who connected the city with the state, and the *scabinus* and the bishop, who represented this connection to the consciousness of the people. We have noted the marked effects produced on the

development of a more popular feeling, by the changes introduced by the great emperor of the Franks; which, by diminishing the power of the local lords, accomplished a double benefit; on the one hand by saving the people from the arbitrary rule of a feudal superior; on the other, by causing the city to become more of a dependence and more of a support to the state as a whole. And finally we have left the city prepared, on the return of another dynasty of native kings, to accept, at least in a large number of cases, the domination of another kind of lord, a spiritual one; who was to serve as a medium for breaking up the power of the old lords of the *civitas*, and from whom it would be an easier task for the commune of the future to wrest the power and the sovereignty which was to make it a free and independent autonomy.

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VII-VIII

PUBLIC LANDS AND AGRARIAN LAWS

OF THE

ROMAN REPUBLIC

JOHNS HOPKINS UNIVERSITY STUDIES
IN
HISTORICAL AND POLITICAL SCIENCE

HERBERT B. ADAMS, Editor

History is past Politics and Politics present History—*Freeman*

NINTH SERIES

VII-VIII

PUBLIC LANDS AND AGRARIAN LAWS

OF THE

ROMAN REPUBLIC

BY ANDREW STEPHENSON, PH. D.
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PREFACE.

In the following pages it has been my object to trace the history of the domain lands of Rome from the earliest times to the establishment of the Empire. The plan of the work has been to sketch the origin and growth of the idea of private property in land, the expansion of the *ager publicus* by the conquest of neighboring territories, and its absorption by means of sale, by gift to the people, and by the establishment of colonies, until wholly merged in private property. This necessarily involves a history of the agrarian laws, as land distributions were made and colonies established only in accordance with laws previously enacted.

My reason for undertaking such a work as the present is found in the fact that agrarian movements have borne more or less upon every point in Roman constitutional history, and a proper knowledge of the former is necessary to a just interpretation of the latter.

This whole question presents numerous obscurities before which it has been necessary more than once to hesitate; it offers, both in its entirety and in detail, difficulties which I have at least earnestly endeavored to lessen. These obscurities and difficulties, arising in part from insufficiency of historical evidence and in part from the conflicting statements of the old historians, have been recognized by all writers and call forth on my part no claim for indulgence.

This monograph is intended as a chapter merely of a history of the public lands and agrarian laws of Rome, written for the purpose of a future comparison with the more recent agrarian movements in England and America.

ANDREW STEPHENSON.

MIDDLETOWN, CONN.
May 8, 1891.

TABLE OF CONTENTS.

PAGE.

CHAPTER I.

SEC. 1. LANDED PROPERTY 7
" 2. QUIRITARIAN OWNERSHIP 13
" 3. AGER PUBLICUS 15
" 4. ROMAN COLONIES 19

CHAPTER II.

SEC. 5. LEX CASSIA 24
" 6. AGRARIAN MOVEMENTS BETWEEN 486 AND 367 26
(*a*). Extension of Territory of conquest up to the year 367 B. C. 35
(*b*). Colonies Founded between 454 and 367 36
SEC. 7. LEX LICINIA 36
" 8. AGRARIAN MOVEMENTS BETWEEN 367 AND 133 46
(*a*). Extension of Territory by conquest between 367 and 133. 59
(*b*). Colonies Founded between 367 and 133 60
SEC. 9. LATIFUNDIA. 62
" 10. INFLUENCE OF SLAVERY 66
" 11. LEX SEMPRONIA TIBERIANA 69
" 12. LEX SEMPRONIA GAIANA 77

CHAPTER III.

SEC. 13. LEX THORIA 79
" 14. AGRARIAN MOVEMENTS BETWEEN 111 AND 86 88
" 15. EFFECT OF THE SULLAN REVOLUTION 91
" 16. AGRARIAN MOVEMENTS BETWEEN 86 AND 59 93
" 17. LEX JULIA AGRARIA 95
" 18. DISTRIBUTIONS OF LAND AFTER THE CIVIL WAR BETWEEN CÆSAR AND POMPEY 98
" 19. DISTRIBUTIONS FROM THE DEATH OF CÆSAR TO THE TIME OF AUGUSTUS 99
(*a*). Lex Agraria of Lucius Antonius 99
(*b*). Lex de Colonis in Agros Deducendis 99
(*c*). Second Triumvirate 100

PUBLIC LANDS AND AGRARIAN LAWS OF THE ROMAN REPUBLIC.

CHAPTER I.

Sec. 1.—Landed Property.

The Romans were a people that originally gave their almost exclusive attention to agriculture and stock-raising. The surnames of the most illustrious families, as Piso (miller), Porcius (swine-raiser), Lactucinius (lettuce-raiser), Stolo (a shoot), etc., prove this. To say that a man was a good farmer was, at one time, to bestow upon him the highest praise.[1] This character, joined to the spirit of order and private avarice which in a marked degree distinguished the Romans, has contributed to the development among them of a civil law which is perhaps the most remarkable monument which antiquity has left us. This civil code has become the basis of the law of European peoples, and recommends the civilization of Rome to the veneration of mankind.

The corner-stone of this legislation was the constitution of the law of property.[2] This property applies itself to every-

[1] Cato, *De Re Rustica*, I, lines 3–8. "Majores nostri . . . . virum bonum cum laudabant, ita laudabant, bonum agricolam bonumque colonum. Amplissime laudari existimabatur, qui ita laudabatur."

[2] Muirhead, *Roman Law*, 36 *et seq.*

thing in the law of Rome, to land, to persons and to obligations.

Urbs, the name of the village, takes its origin, according to an etymology given by Varro,[1] from the furrow which the plow traced about the habitations of the earliest dwellers. But what is of more interest to us is that the legal signification of *Urbs* and *Roma* was different. The former was the village comprised within the sacred enclosure; the latter was the total agglomeration of habitations which composed the village, properly[2] so called, and the outskirts, or suburbs. The powers of certain magistrates ceased with the sacred limits of the *Urbs*, while the privileges accorded to a citizen of Rome extended to the village and the suburbs and finally embraced the entire Roman world.

The most ancient documents which have reached us from the history of India and Egypt reveal that they had landed property fully established, while Roman annals reveal to us the very creation of this institution. Whatever modern criticism may deduce, Dionysius, Plutarch, Livy, and Cicero agree in representing the first king of Rome as merely establishing public property in Roman soil. This national property, the people possessed in common and not individually. Such appears to us to be the quiritarian property *par excellence*,[3] and its primitive form was a variety of public community[4] of which individual property was but a later solemn emancipation. To this historic theory attaches the true notion of quiritarian land of which we will speak in greater detail hereafter.

As regards the organization and constitution of individual and private property, the traditions themselves attribute this to the second king of Rome, the real founder of Roman

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[1] Varro, *De Lingua Latina*, V, 143.

[2] Frag. to Digest, 287 and 147 of Title 16, Bk. 50 with notes of Schultung and Small.

[3] Plutarch's *Romulus*, § 19.

[4] Mommsen, *History of Rome*, I, 194.

society, who divided the territory among the citizens, marking off the limits of individual shares and placing them under the protection of religion. In this way a religious charter was granted to the institutions of private property. Thus a primitive division of territory appears to have been the basis of these varied traditions, but the precise form of this division eludes us.

The Roman territory was confined for many ages to a surface of very limited extent, which properly bore the name of *Ager Romanus.* This name with signification slightly changed appeared to be still in use in the time of the empire, and even at the present day a portion of the Roman territory which very nearly corresponds to the ancient territory of the imperial period is called *Agro Romano.*[1] That which was properly called *Ager Romanus* at first only occupied the surface of a slightly expanded arc whose chord was the river Tiber.[2] Primitive Rome did not extend beyond the Tiber into Etruria, and toward Latium her possessions did not extend beyond the limits of some five or six miles reckoning from the Palatine. Toward the east the towns of Antemnae, Fidenae, Caenina, Collatia and Gabia lay in the immediate neighborhood, thus limiting the extension of the city in that direction within a radius of five or six miles;[3] and northward the Anio[4] formed the limit. To the southwest as you approach Lavinium, the sixth milestone marked the boundary of Rome. Thus with the possible exception of a small strip of land extending upon either bank of the Tiber to its mouth, and embracing the old site[5] of Ostia, have we marked out all of ancient Rome. Strabo[6] says it could be gone round in a single day. And according to this same author it was within these limits that the annual auspices[7] could be taken.

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[1] Sismondi, *Etudes sur l'econ. polit.*, I, 2, § 1.

[2] Pseudo Fabius Pictor, Bk. I, p. 54; Plut., *Numa*, 16; Festus V° Pectustum.Palati, p. 198 and 566, Lindemann.

[3] Arnold, *Roman History*, I, ch. 3, par. 4. [4] Mommsen, I, 75.

[5] Strabo, Bk. 5, 253. [6] Strabo, Bk. 5, ch. 3, § 2. [7] Arnold, I, ch. 3.

Both city and land increased with time. Property seemed to have been added and lost successively during the reign of the kings.[1] The last increase of the *Ager Romanus* was due to the labors of Servius Tullius, and it was in the reign of this king that it reached its greatest limit. Dionysius[2] says: "As soon as he (Servius) was invested with the government, he divided the public lands among such of the Romans as having no lands of their own, cultivated those of others. . . . He added two hills to the city, that called the Viminal and the Esquiline hill, each of which forms a considerable city; these he divided among such Romans as had no houses, to the intent that they might build them. . . . This king was the last who enlarged the circumference of the city by the addition of these two hills to the other five, having first consulted the auspices as the law decided, and performed the other religious rites. Further than this the city has not since then been extended." Without doubt these possessions received great additions in later times,[3] but they were not incorporated in the *Ager Romanus* as the preceding had been. The subjugated territories kept their ancient names while their lands were made the object of distributions to the people, of public sales to the citizens who also extended their possessions outside of Roman[4] territory, or else the new conquests were abandoned to municipia, given up to colonies, or became a part of that which was called *Ager Publicus.* In fine, it was a fundamental principle of the public law of Rome that the lands and the persons of the people conquered belonged to the conqueror, the Roman people, who either in person or by their delegates disposed of them as it seemed best. Among the ancients war always decided concerning both liberty and property.

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[1] Dionysius, II, 55; V, 33, 36; III, 49–50; Livy, I, 23–36.

[2] Dionysius, IV, 13.

[3] Varro, *De Lingua Latina,* V, 33.

[4] Sigonius, *De Antiq. Juris Civ. Rom.,* Bk. I, ch. 2.

The result of all these facts was that the Roman territory was made the object of a division or a primitive distribution either among the three races of the first population, or a little later among the citizens or inhabitants. This very same principle has been frequently observed in recent times in regard to confiscated[1] territories and conquered peoples.

Now what was the allotment of the first distribution of land?

Upon this topic the ancient authorities are blind and confusing to such an extent as to be wholly inadequate for the solution of the difficulty. Among the more recent authorities, two opposing systems have been sustained, the one represented by Montesquieu, and the other by Niebuhr. (1) According to Montesquieu, the kings of Rome divided the land into perfectly equal lots for all the citizens and the title of the law of the Twelve Tables relative to successions was for no other object than to establish this ancient equality of the division of lands.[2] (2) Niebuhr,[3] on the contrary, claimed that territorial property was primitively the attribute of the patriciate and everyone who was not a member of this noble race was incapable of possessing any part of the territory. From this theory the author deduced numerous consequences which are important both to law and history. Neither of these systems is free from errors. Montesquieu seems to have made no difference between patrician and plebeian in using the term *citizen*, while it is no longer disputed that the plebeian was not a burgess and consequently had no civic rights save those granted to him by the ruling class. His idea of goods must have, at least, become chimerical at a very early date, as this equality was so little suspected by the ancients that Plutarch,[4] after

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[1] Hume's *Hist. of Eng.*, I, ch. 4: IV, ch. 61.

[2] *Esprit des lois*, Liv. 27, c. I.

[3] *Roman Hist.*, II, 164; III, 175 and 211.

[4] Lycurgus and Numa, II; Cicero, *De Repub.*, II, 9.

having spoken of the efforts of Lycurgus to overturn the inequality of wealth among the Spartans, accuses Numa of having neglected a necessity so important. It is moreover difficult to see how Montesquieu could think that testamentary disposition tended to maintain equality when the privilege was accorded to every citizen of disposing of his entire patrimony by will even to the prejudice of his children.[1] Again, the law of debts was hardly favorable[2] to equality.

Niebuhr clearly[3] denied the existence of the plebs until Ancus incorporated the Latins and bestowed upon them peculiar privileges thus forming a new and third class distinct from both patricians and clients. Had Niebuhr succeeded in establishing this view, the right to landed property would appear to be wholly vested in the patricians, for a client, from the very nature of his position, could hold nothing independent of his master. But this theory has fallen to the ground and no writer of the present day pretends to uphold it. The plebeians existed from the very first and some of them held land in full private ownership very little different from the quiritarian ownership of the patricians. Cicero, who in his Republic has occupied himself with the ancient constitution of Rome and has spoken in detail of the division of the lands, always speaks of the distribution among the citizens without regard to quality of patrician or plebeian, *divisit viritim civibus.* He has nowhere written that territorial riches were the exclusive appanage of the patriciate. It must be confessed, however, that it is doubtful whether he intended to embrace the plebeians in his *civibus.* For more than two centuries before the time of Cicero the plebeians had enjoyed the full rights of Roman citizenship, but for more than that length of time property

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[1] Muirhead, *Roman Law*, 46 and note—"uti legasset suae rei ita jus esto."
[2] Muirhead, 92–96. [3] Niebuhr, I.
[4] Momm., I, 126; Ihne, I; Nitzsch, *Geschichte der römischen Republik*, 52; Lange, *Römische Geschichte*, I, 18.

had been concentrated in the hands of the aristocracy. This result was the consequence of the Roman constitution[1] and the establishment of a populous city in the midst of a narrow surrounding country. Roman policy had never been conducive to this concentration, and it will hereafter appear that the nobility who had the chief direction and administration of public affairs had little by little usurped the property which formed the domain of the state, *i. e. Ager Publicus*, and swallowed up the revenues due the treasury.

Sec. 2.—Quiritarian Ownership.

Citizenship was the first requisite to the right of property in Roman territory. This rule, although invariable and inherent in the Roman state, bent under the influence of international politics or the philosophy of law, yet its severity affords us a notable characteristic of the law of ancient Rome. Cicero and Gaius have preserved to us an important monument of this law in a fragment of the Twelve Tables which proclaims the solemn principle, *adversus hostem aeterna auctoritas esto.*[2] *Hostis* in the old Latin language was synonymous with stranger, *perigrinus.*[3] This Roman name was moreover applied to a person who had forfeited the protection of the law by reason of a criminal condemnation, and who was therefore designated *peregrinus.*[4]

Auctoritas also had in old Latin a different signification from what it has in later Latin. It expressed the idea of the right to claim and defend in equity. It was very nearly equivalent to the right of property.[5] The sense of the Roman

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[1] Dureau de la Malle, *Mém. sur les pop. de l'Italie*, 500 *et seq.*

[2] De Officiis, I, 12; Gaius, Frag., 234: Digest, 50, 16.

[3] Varro, De L. L. V. 14; Plautus, *Trinummus*, Act I, Scene 2, V. 75; Harper's *Latin Dictionary*; Cicero, *De Off.*, I, 12: "Hostis enim apud majores nostros is dicibatur, quem nunc peregrinum dicimus."

[4] Cic., *loc. cit.*; Gaius, Frag., 234.

[5] Forcellini, *Lexic.*; Harper's *Latin Lex.*

law was, then, that the *peregrinus* could not bar or proceed against a Roman, a disposition somewhat similar to the old law of England.[1] And as it was necessary to be a citizen in order to acquire by the civil and solemn means which dominated the law of property in Rome, it followed that the *peregrini* were excluded from all right to property in land by these laws. This exclusive legislation for a long time governed Europe and did not disappear even from the Code Napoleon of 1819.[2]

We have a forcible example of the severity of the old Roman law in this regard in the text of Gaius,—*Aut enim ex jure quiritium unusquisque dominus erat, aut non intelligebatur dominus.*[3]

Dominium was therefore inseparable from *Jus Quiritium*, the law of the Roman city, the *optimum jus civium Romanorum.* The *peregrinus* was excluded from landed property both Roman and private; he could neither inherit nor transmit; claim nor defend in equity. Moreover the name *peregrinus* was not confined to the stranger proper but was also bestowed upon subjects of Rome[4] who, being deprived of their property and also of political liberty by right of conquest, had not received the right of citizenship which was for a long time confined within very narrow limits. It would thus appear conclusive from the law quoted that the client and plebeian could not at first hold land *optimo ex jure quiritium.*

Thus the tenure of the patricians was three-fold: first, they had full property in the land; second, they had a seigniorial right, *jus in re*, in the land of their clients and the plebeians whose property belonged to the *populus*, *i. e.* the generality of the patricians; in the third place, in their own hands, they

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[1] *i. e.* The descendents of a person escheated could bring no action for the recovery of the property.

[2] Giraud, *Recherches sur le Droit de Propriété*, p. 210.

[3] Gaius, Bk. II, 40.

[4] Ulpian, Frag., Title XIX, 4; Giraud, 216.

held lands which were portions of the domain and which were held by a very precarious tenure called *possessio.*

According to Ihne, all lands in Rome were held by the above mentioned tenure until the enactment of the Icilian law *de Aventino publicando* which involved a change of tenure by converting the former dependent and incumbered tenure of the plebeians into full property.

Sec. 3.—Ager Publicus.

In her early history Rome was continually making fresh conquests, and in this way adding to her territory.[1] She steadfastly pursued a course of destruction to her neighbors in order that she might thereby grow rich and powerful. In this way large tracts of territory became Roman land, the property of the state or *Ager Publicus.*[2]

This public land extended in proportion to the success of the Roman arms, since the confiscation of the territory of the vanquished was, in the absence of more favorable terms, a part of the law of war. All conquered lands before being granted or sold to private individuals were *Ager Publicus,*[3] a term which with few exceptions came to embrace the whole Roman world.

This *Ager Publicus* was farther increased by towns[4] voluntarily surrendering themselves to Rome without awaiting the iron hand of war. These were commonly mulcted of one-third of their land.[5] "The soil of the country is not the product of labor any more than is water or air. Individual citizens cannot therefore lay any claim to lawful property in land as to anything[6] produced by their own hands." The state in this case, as the representative of the rights and

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[1] Long, *Decline of the Roman Rep.*, I, ch. 11.
[2] Muirhead, *Roman Law*, 92.
[3] Ortolan, *Histoire de la legislation Romaine*, p. 21.
[4] Mommsen, I, 131; Arnold, I, 157.
[5] Dionysius, IV, 11, Livy. [6] Ihne, I, 175.

interests of society, decides how the land shall be divided among the members of the community, and the rules laid down by the state to regulate this matter are of the first and highest importance in determining the civil condition of the country and the prosperity of the people. Whenever but one class among the people is privileged to have property in land a most exclusive oligarchy is formed.[1] When the land is held in small portions by a great number and nobody is legally or practically excluded from acquiring land, there we find provided the elements of democracy.

According to the strictest right of conquest in antiquity the defeated lost not only their personal freedom, their moveable and landed[2] property, but even life itself. All was at the mercy of the conquerors. In practice a modification of this right took place and in Rome extreme severity was applied only in extreme cases, generally as a punishment for treason.[3]

This magnanimity was not rare and it even went so far as to restore the whole of the territory to the people subdued.[4] But let us not suppose that this humanity toward a conquered people sprang from any pity inspired by their forlorn condition. It was due merely to the interest of the conquerors themselves. The conquered lands must still be cultivated and the depleted population restored. For this reason the conquered had generally not only life and freedom left them but also the means of livelihood, *i. e.* some portion of their land. This portion they held subject to no restrictions or services save those levied upon quiritarian property. It was private property to the full legal extent of the expression, thus being in the unlimited disposition of the individual.[5] These people formed the nucleus of the plebeians, the freemen who were

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[1] Ihne, I, 175.

[2] Livy, Bk. I, c. 38, with note by Drachenborch; Livy, Bk. VII, c. 31.

[3] Siculus Flaccus, *De Conditione Agrorum*, 2, 3: "Ut vero Romani omnium gentium potiti sunt, agros alios ex hoste captos in victorem populum partiti sunt, alios verro agros vendiderunt, ut Sabinorum ager qui dicitur quaestorius."

[4] Cicero, in Verrem, II, Bk. 3, § 6.

[5] Giraud, *Droit de propriété chez les romains*, 160.

members of the Roman state[1] without actually having any political rights.

The *Ager Publicus* was the property of the state and as such could be alienated only by the state.[2] This alienation could be accomplished in two ways:

(*a*). By public sale;

(*b*). By gratuitous distribution.

(*a*). The public sale was merely an auction to the highest bidder and in the later days of the monarchy and early part of the republic, rich plebeians must have become possessed of large tracts of land in this way; the privilege of acquiring property in land having been extended to them some time before the Servian reform.[3]

(*b*). The gratuitous distribution of land was accomplished by means of Agrarian Laws or royal grant and had for its object the establishment of colonies for purposes of defence, the rewarding of veterans or meritorious soldiers,[4] or in later times, the providing for impoverished plebeians.

But even in the earliest times a portion of the domain lands was excluded from sale or private appropriation,[5] in order to serve as a resource for the needs of the state.

This was the general usage of ancient republics and this maxim of reserved lands was recommended[6] by Aristotle as the first principle of political economy.

Such reserved *ager publicus* was leased either in periods of five years (quinquennial leaseholds) or perpetually, *i. e.*, by emphyteutic lease or copyhold. From these lands[7] the treasury received an income of from one-tenth to one-fifth of the annual crops.

Besides these legal methods mentioned there was another very common one which was seemingly never established by any law and therefore existed merely by title of tolerance. I

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[1] Ihne, I, 175. [2] Muirhead, 92; Giraud, 165.

[3] Higin., *De Limit. Const. apud Goes. Rei Agr. Script.*, pp. 159–160.

[4] Giraud, 164. [5] Dionysius, II, 7.

[6] Aristotle, *Polit.*, Z. Κεφ. θ. 7: Αναγκαιὸν τοίνυν εἰς δυο μέρη διηρῆσθαι τὴν χώραν καὶ τὴν μεν εἶναι κοινὴν, τὴν δὲ τῶν ἰδιωτῶν. [7] Giraud, 163.

speak of the indefinite *possessio* which was nothing but an occupation on the part of the patricians[1] of the land belonging to the state and was in nature quite similar to the so-called "squatting" commonly practiced in some of our western states and territories. The title to the enjoyment of the public lands was at first clearly vested in the patricians nor was this right extended to the plebeians until after they had been admitted to full citizenship. With regard to the state the *possessor*[2] was merely a tenant at will and could be removed whenever desired; but as regarded other persons he was like the owner of the soil and could alienate the land which he occupied either for a term of years, or forever, as if he were the real proprietor.[3] The public land thus occupied was looked to as a resource upon the admission of new citizens. They customarily received a small freehold according to the general notion of antiquity that a burgess must be a landowner. This land could only be found by a divison of that which belonged to the public, and a consequent ejectment of the tenants at will. In the Greek states every large accession to the number of citizens was followed by a call for a division of the public lands and, as this division involved the sacrifice of many existing interests, it was regarded with aversion by the old burgesses as an act of revolution.

A great part of the wealth of the Romans consisted in domains of this kind, and the question will occur to the thoughtful mind how the government was able to keep the most distinguished part of her citizens in a legal position so uncertain and alarming. English law is very different from the Roman in this respect and would decide in favor of the

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[1] Festus, p. 209, Lindemann; Cicero, ad Att. II, 15; Philipp. V, 7; De Leg. Agr. I, 2, III, 3; De Off. II, 22; Livy, II, 61, IV, 51, 53, VI, 4, 15; Suet. Julius Cæsar, 38; Octavius, 13, 32; Cæsar, De Bell. Civ., I, 17; Orosius, V, 18.

[2] Aggenus Urbicus, p. 69, ed. Goes.

[3] Giraud, 185–187; Mommsen, I, 110; Ortolan, 227; Hunter, *Roman Law*, 367.

tenant and against the state. It is fairly possible that this uncertainty of tenure tended to render the government more stable and less liable to sudden revolutionary movements, thus having the same effect upon the Roman government which funded debts have upon the nations of to-day.

Sec. 4.—Roman Colonies.

Probably in no other way does the Roman government so clearly reveal its nature and strength as in its method of colonization. No other nation, ancient or modern, has ever so completely controlled her colonies as did the Roman. Her civil law, indeed, reflected itself in both political and international relations. In Greece, as soon[1] as a boy had attained a certain age his name was inscribed upon the tribal rolls and henceforth he was free from the *potestas* of his father and owed him only the marks of respect which nature demanded. So too, at a certain age, the colonies separated themselves from their mother city without losing their remembrance of a common origin. This was not so in Rome. The children[2] were always under the *potestas* of their parents. By analogy therefore, the colonies ought to remain subject to their mother city. Greek colonies went forth into a strange land which had never been conquered by Hellenic arms or hitherto trod by Grecian foot. Roman[3] colonies were established by government upon land which had been previously conquered and which therefore belonged to the Roman domain. The Greek was fired with an ambition to obtain wealth and personal distinction, being wholly free to bend his efforts to personal ends. Not so the Roman. He sacrificed self for the good of the state. Instead of the allurements of wealth he received some six jugera of land, free from taxation it is true, but barely

[1] Bouchaud, M. A., *Dissertation sur les colonies romaines*, pp. 114–222, en Memoires de l'institut Sciences, Morals et Politique, III.

[2] Muirhead's Article on *Roman Law* in Ency. Brit.; Ihne, I, 235.

[3] Momm., I, 145.

enough to reward the hardest labor with scanty subsistence. Instead of the hope of personal distinction, he in most cases sacrificed the most valuable of his rights, *jus suffragii et jus honorum* and suffered what was called *capitis diminutio.* He devoted himself, together with wife and family, to a life-long military service. In fact the Romans used colonization as a means to strengthen their hold upon[2] their conquests in Italy and to extend their dominion from one centre over a large extent of country. Roman colonies were not commercial. In this respect they differed from those of the Phoenicians and Greeks. Their object was essentially military[3] and from this point of view they differed from the colonies of both the ancients and moderns. Their object was the establishment of Roman power. The colonists marched out as a garrison into a conquered town and were exposed to dangers on all sides. Every colony acted as a fortress to protect the boundary and keep subjects to their allegiance to Rome. This establishment was not a matter of individual choice nor was it left to any freak of chance. A decree of the senate decided when and where a colony should be sent out, and the people in their assemblies elected individual members for colonization.

From another point of view Roman colonies were similar to those of Greece, since their result was to remove from the centre to distant places the superabundant population, the dangerous,[4] unquiet, and turbulent.

But the difference in the location of the colonies was easy to distinguish. In general the Phoenicians and the Greeks as well as modern people founded their colonies in unoccupied localities. Here they raised up new towns which were located in places favorable to maritime and commercial relations. The Romans, on the contrary, avoided establishing colonies in

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[1] Momm., *loc. cit.*

[2] Brutus (App. B. C., II, 140) calls the colonists, Φύλακας τῶν πεπολεμηκότων.

[3] Ihne, I, 236.

[4] Cicero, Ad Att., I, 19: "Sentinam urbis exhaurire, et Italiae solitudinem frequentori posse arbitrabor."

new places. When they had taken possession of a city, they expelled from it a part of the inhabitants, whether to transfer them to Rome as at first, or a little later, when it became necessary to discourage the increase of Roman population, to more distant places. The population thus expelled was replaced with Roman and Latin citizens.[1] Thus a permanent garrison was located which assured the submission of the neighboring countries and arrested in its incipiency every attempt at revolt. In every respect these colonies remained under surveillance and in a dependence the most complete and absolute upon the mother city, Rome. Colonies never became the means of providing for the impoverished and degraded until the time of Gaius Gracchus. When new territory was conquered, there went the citizen soldier. Thus these colonies mark the growth of Roman dominion as the circumscribed rings mark the annual growth of a tree. These colonies were of two kinds, Latin and Roman.

1. Latin colonies were those[2] which were composed of Latini and Hernici, or Romans enjoying the same rights as these, *i. e.* possessed of the Latin right rather than the Roman franchise. They were established inland as road fortresses and being located in the vicinity of mountain passes or main thoroughfares acted as a guard to Rome, and held the enemy in check.

2. Roman, or Burgess, colonies[3] were those composed wholly of Roman citizens who kept their political rights and consequent close union with their native city. In some cases Latini were given the full franchise and permitted to join these colonies. In position as well as rights, these colonies were distinguished from the Latin, being with few exceptions situated upon the coast and thus acting as guards against foreign invasion.

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[1] Momm., I, 145.

[2] Marquardt u. Momm., IV, 35–51; Momm., *History of Rome*, I, 108, 539; Madvigi Opuscula Academica, I, 208–305.

[3] Marquardt u. Momm., IV, 35–51; Ihne, vols. I–V; Momm., vols. I–V; Madvigi Opus., *loc. cit.*

Table of Latin Colonies in Italy.

	COLONIES.	LOCATION.	B. C.	AUTHORITIES.
1	Signia.	Latium.	?	Livy, 1, 56; Dionys., 4, 63.
2	Cerceii.	"	?	Id.
3	Suessa Pometia.	"	?	Livy, 2, 16.
4	Cora.	"	?	Livy, 2, 16.
5	Velitrae.	"	494	Livy, 2, 30, 31; Dionys., 6, 42, 43.
6	Norba.	"	492	Livy, 2, 34; Dionys, 7, 13.
7	Antium.	"	467	" 3, 1; " 9, 59.
8	Ardea.	"	442	" 4, 11; Diodor., 12, 34.
9	Satricum.	"	385	" 6, 14.
10	Sutrum.	Etruria.	383	Vell., 1, 14.
11	Nepete.	"	383	Livy, 6, 21; Vell.
12	Setia.	Latium.	382	Vell., 1, 14; Livy, 6, 30.
13	Cales.	Campania.	334	" 1, 14; " 8, 16.
14	Fregellae.	Latium.	328	Livy, 8, 22.
15	Luceria.	Apulia.	314	" Epit., 60.
16	Suessa.		313	" 9, 28.
17	Pontiae.	Isle of Latium.	313	" 9, 28.
18	Saticula.	Samnium.	313	" 9, 22; Vell., 1, 14; Festus, p. 340.
19	Interamna Lirinas.	Latium.	312	Livy, 9, 28; Vell., 1, 14; Diodor., 19, 105.
20	Sora.	"	303	Livy, 10, 1; Vell., 1, 14.
21	Alba.	"	303	" 10, 1; " 1, 14.
22	Narnia.	Umbria.	299	" 10, 10.
23	Carseola.	Latium.	298	" 10, 13.
24	Venusia.	Apulia.	291	Vell., 1, 14; Dionys. Ex., 2335.
25	Hatria.	Picenum.	289	Livy, Epit., 11.
26	Cosa.	Campania.	273	" " 14; Vell., 1, 14.
27	Paestum.	Lucania.	273	Id. Id.
28	Ariminum.		268	Vell., 1, 14; L. Epit., 15; Eutrop., 2, 16.
29	Beneventum.	Samnium.	268	Vell., 1, 14; L. Epit., 15; Eutrop., 2, 16.
30	Firmum.	Picenum.	264	Vell., 1, 14.
31	Aesernia.	Samnium.	263	" 1, 14; L. Epit., 16.
32	Brundisium.	Calabria.	244	" 1, 14; " 19.
33	Spoletium.	Umbria.	241	" 1, 14; " 20.
34	Cremona.	Gallia Cis.	218	Tacitus, *Hist.*, 3, 35.
35	Placentia.	" "	218	L. Epit., 20; Polyb., 3, 40; V. 1, 14, 8.
36	Copia.	Lucania.	193	Livy, 34, 53.
37	Valentia.	Bruttii.	192	" 34, 40; 35, 40.
38	Bononia.	Gallia Cis.	189	" 37, 57; Vell., 1, 15.
39	Aquileia.	Gallia Trans.	181	" 40, 34; " "

Table of Civic Colonies in Italy.

	COLONIES.	LOCATION.	B. C.	AUTHORITY.
1	Ostea.	Latium.	418	Livy, 1, 33; Dionys., 3, 44; Polyb., 6, 29; Cic. de R. R., 2, 18, 33.
2	Labici.	"	418	Livy, 4, 47, 7.
3	Antium.	"	338	" 8, 14.
4	Auxur.	"	329	" 8, 21; 27, 38; Vell., 1, 14.
5	Minturnae.	Campania.	296	Livy, 10, 21.
6	Sinuessa.	"	296	" 10, 21; 27, 38.
7	Sena Gallica.	Umbria.	283	" Epit., 11; Vell., 1, 14, 8.
8	Castrum Novum.	Picenum.	283	Livy, Epit., 11; Vell., 1, 14, 8.
9	Aesium.	Umbria.	247	Vell., 1, 14, 8.
10	Alsium.	Etruria.	247	" 1, 14, 8; L. Epit., 19; L., 36, 3.
11	Fregena.	"	245	Livy, 36, 3.
12	Pyrgi.	"	191	" "
13	Puteoli.	Campania.	194	" 34, 45.
14	Volturnum.	"	194	Id.
15	Liturnum.	"	194	Id.
16	Salernum.	"	194	Id.
17	Buxentum.	Lucania.	194	Livy, 34, 45.
18	Sipontum.	Apulia.	194	Id.
19	Tempsa.	Bruttii.	194	Id.
20	Croton.	"	194	Id.
21	Potentia.	Picenum.	184	Livy, 39, 44.
22	Pisaurum.	Umbria.	184	" " "
23	Parma.	Gallia Cis.	183	" " 55.
24	Mutina.	Gallia Cis.	183	Livy, 39, 55.
25	Saturnia.	Etruria.	183	" " "
26	Graviscae.	"	181	" 40, 39.
27	Luna.	"	180	" 41, 13.
28	Auximum.	Picenum.	157	Vell., 1, 15, 3.
29	Fabrateria.	Latium.	124	" 1, 15, 4.
30	Minervia.	Bruttii.	122	" 1, 15, 4; Appian B. C., 2, 23.
31	Neptunia.	Iapygia.	122	Id.
32	Dertona.	Liguria.	100	Vell., 1, 15, 5.
33	Eporedia.	Gallia Trans.	100	" " "
34	Narbo Martius.	" Narbo.	118	Mommsen.

CHAPTER II.

Sec. 5.—Lex Cassia.

Every year added to the difference between the patrician and plebeian, the rich and the poor; a difference which had now grown so great as to threaten seriously the very existence of the state. The most sagacious of all the plans which had been proposed to stop this evil, was that set forth by Spurius Cassius, a noble patrician now acting as consul for the third[1] time. In the year 268, he submitted to the burgesses[2] a proposal to have the public land surveyed, that portion belonging to the populus set aside and the remainder divided among the plebeians or leased for the benefit[3] of the public treasury.

He thus attempted to wrest from the senate the control of the public land and, with the aid of the Latini and the plebeians, to put an end to the system of occupation.[4] The lands which he proposed to divide were solely those which the state had acquired through conquest since the general assignment by king Servius, and which it still retained.[5] This was the first measure by which it was proposed to disturb the possessors in their peaceful occupation of the state lands, and, according to Livy, such a measure had never been proposed from then to the time in which he was writing, under Augustus, without exciting the greatest disturbance.[6] Cassius might well

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[1] Dionysius, VIII, 68; "Οι δὲ παρὰ τούτων τὴν ὑπατείαν παραλαβόντης πόπλιος Οὐεργίνιος καὶ Σπόριος Κάσσιος, τὸ τρίτον τότε ἀποδειχθεὶς ὕποτος, κ. τ. λ."

[2] Dionysius, VIII, 69; Livy, II, 41, *seq.*

[3] Dionysius, VIII, 81.

[4] Dionysius, VIII, 69; Mommsen, I, 363.

[5] Niebuhr, II, 166.

[6] Livy, II, 41; "Tum primum lex agraria promulgata est nunquam deinde usque ad hanc memoriam sine maximus motibus rerum agitata."

suppose that his personal distinction and the equity and wisdom of the measure would carry it through, even amidst the storm of opposition to which it was subjected. Like many other reformers equally well meaning, he was mistaken.

The citizens who occupied this land had grown rich by reason of its possessions. Some of them received it as an inheritance, and doubtless looked upon it as their property as much as the *Ager Romanus*. These to a man opposed the bill. The patricians arose en masse. The rich plebeians, the aristocracy of wealth, took part with them. Even the commons were dissatisfied because Spurius Cassius proposed in accordance with federal rights and equity to bestow a portion of the land upon the Latini and Hernici, their confederates and allies.[1] The bill proposed by Cassius, together with such provisions as were necessary, became a law, according to Niebuhr,[2] because the tribunes had no power to bring forward a law of any kind before the plebeian tribes obtained a voice in the legislature by the enactment of the Publilian law in 472 B. C.; so that when they afterwards made use of the agrarian law to excite the public passions it must have been one previously enacted but dishonestly set aside and, in Dionysius' account, this is the form which the commotion occasioned by it takes.[3] Though this is doubtless true, yet the law, by reason of the combined opposition, became a dead letter and the people who would have been most benefited by its enforcement joined with Cassius' enemies at the expiration of his term of office to condemn him to death. In this way does ignorance commonly reward its benefactors. This agitation aroused by Cassius, stirred the Roman Commonwealth, now more than twenty years old, to its very foundations, but it had no immediate effect upon the *ager publicus*. The rich patrician together with the few plebeians who had wealth

[1] Livy, II, 41; Dionysius, VIII, 69. [2] Niebuhr, II.

[3] Dionysius, VIII, 81: "*ἐκκλήσιαί τε συνεγεῖς ὑπὸ τῶν τότε δημάρχων ἐγίνοντο καὶ ἀπαιτήσεις τῆς ὑποσχέσεως.*" See also VIII, 87, line 25 *et seq.*

enough to farm this land, still held undisputed possession. The poor plebeian still continued to shed his blood on the battle field to add to Roman territory, but no foot of it did he obtain. Wealth centralized. Pauperism increased.

Sec. 6.—Agrarian Movements between 486 and 367.

Modern historians who have written upon the Roman Republic have, so far as I know, passed immediately from the consideration of the *Lex Cassia* to the law of Licinius Stolo. Meanwhile more than a century had passed away. Cassius died in 485, Licinius Stolo proposed his law in 376. During this century which had beheld the organization of the republic and the growth, by tardy processes, of the great plebeian body many agrarian laws were proposed and numerous divisions of the public land took place. Both Dionysius and Livy mention them. The poor success of the proposition of Cassius and the evil consequences to himself in no way checked the zeal of the tribunes. Propositions of agrarian laws followed one another with wonderful rapidity. Livy enumerates these propositions, but almost wholly without detail and without comments upon their tendencies or points of difference from one another or from the law of Cassius. As this law failed of its object by being disregarded, we may safely conclude that the most of these propositions were but a reproduction of the law of Cassius.

In 484, and again in 483, the tribune proposed agrarian laws but what their nature was, Livy, who records them, does not tell us. From some vague assertions which he makes we may conclude that the point of the law was well known, and was but a repetition of that of Cassius.[1] The consul Caeso Fabius, in 484, and his brother Marcus in the

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[1] "Solicitati, eo anno, sunt dulcedine agrariae legis animi plebis, . . . vana lex vanique legis auctores." Livy, II, 42.

following year, secured the opposition of the senate and succeeded in defeating their laws.

Livy (II, 42,) mentions very briefly a new proposition brought forward by Spurius Licinius in 482. Here we are able to complete his account by reference to Dionysius,[1] who says that, in 483, a tribune named Caius Maenius had proposed an agrarian law and declared that he would oppose every levy of troops until the senate should execute the law ordaining the creation of decemvirs to determine the boundaries of the domain land and, in fine, forbid the enrolment of citizens. The senate was able through the consuls, Marcus Fabius and Valerius, the ancient colleague of Cassius, to invent a means of avoiding this difficulty. The authority of the tribunes by the old Roman law,[2] did not reach without the walls of the city, while that of the consuls was everywhere equal and only bounded by the limits of the Roman world. They moved their curule chairs and other insignia of their authority without the city walls and proceeded with the enrolments. All who refused to enroll were treated as enemies[3] of the republic. Those who were proprietors had their property confiscated, their trees cut down, and their houses burned. Those who were merely farmers saw themselves bereft of their farm-implements, their oxen and all things necessary for the cultivation of the soil. The resistance of the tribunes was powerless against this systematic oppression on the part of the patricians; the agrarian[4] law failed and the enrolment progressed.

There is some difficulty in determining the facts of the law proposed by Spurius Licinius[5] of which Livy speaks. Dionysius calls this tribune, not Licinius but Σπύριος Σικίλιος. The Latin translation of Dionysius has the name Icilius and this has been the name adopted by Sigonius and other his-

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[1] Dionysius, VIII, 606, 607.
[2] Livy, *loc. cit.*: Dionysius, *loc. cit.*
[3] Dionys., VIII, 554.
[4] Dionys., VIII, 555.
[5] Val. Max., Fg. of Bk. X: "Spurii, patre incerto geniti."

torians. Livy tells us that the Icilian family was at all times hostile to the patricians and mentions many tribunes by this name who were staunch defenders of the commons. In accepting this correction, therefore, it is not necessary to confound this Icilius with the one who proposed the partition of the Aventine among the plebeians. Icilius, according to both Livy and Dionysius,[1] made the same demand as the previous tribunes, *i. e.*, that the decemvirs should be nominated for the survey and distribution of the domain lands, according to previous enactment. He further declared that he would oppose every decree of the senate either for war or the administration of the interior until the adoption and execution of his measures. Again the senate avoided the difficulty and escaped, by a trick, the execution of the law. Appius Claudius, according to Dionysius,[2] advised the senate to search within the tribunate for a remedy against itself, and to bribe a number of the colleagues of Icilius to oppose his measure. This political perfidy was adopted by the senate with the desired effect. Icilius persisted in his proposition and declared he would rather see the Etruscans masters of Rome than to suffer for a longer time the usurpation of the domain lands on the part of the possessors.[3]

This somewhat circumstantial account has revealed to us that at this time it took a majority of the tribunes to veto an act of their colleague. At the time of the Gracchi the veto of a single tribune was sufficient to hinder the passage of a law, and Tiberius was for a long time thus checked by his colleague, Octavius. Then the tribunician college consisted of ten members, and it would be no very difficult thing to detach one of the number either by corruption or jealousy. But it is evident that, at the time we are considering, it took a majority of the tribunes to veto an act of a colleague;

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[1] Livy, *loc. cit.*; Dionys., *loc. cit.* [2] Dionys., IX, 558; Livy, II, 43.

[3] Dionys., IX, 559–560: "τοὺς κατέγοντος τὴν χώραν τὴν δεμοσίαν." . . . "Καὶ Σικίλιος οὐδενὸς ἔτι κύριος ἦν."

moreover, the college consisted of five members. This latter fact is seen in the statement of Livy,[1] when he mentions the opposition which four of the tribunes offered to their colleague, Pontificius, in 480. In this same case he attributes to Appius Claudius the conduct which Dionysius attributed to him in the previous year. But he causes Appius to state, in his speech favoring the corruption of certain tribunes, "that the veto of one tribune would be sufficient to defeat all the others."[2] This is contrary to the statement of Dionysius[3] and would seem improbable, for, if the opposition of one tribune was sufficient, the patricians would not have deemed it necessary to purchase four. That would be contrary to political methods.

Of the two propositions of the tribunes, Icilius, in 482, and Pontificius, in 480, the results were the same. The opposition of their colleagues defeated them. But this persistent opposition rather than crushing seemed to stir up renewed attacks. We have seen the tribunes, Menius, Icilius, and Pontificius, successively fail. The next movement was led by a member of the aristocracy, Fabius Caeso,[4] consul for the third time in 477. He undertook to remove from the hands of the tribunes the terrible arm of agrarian agitation which they wielded constantly against the patricians, by causing the patricians themselves to distribute the domain lands equally among the plebeians, saying: "that those[5] persons ought to have the lands by whose blood and sweat they had been gained." His proposition was rejected with scorn by the patricians, and this attempt at reconciliation failed as all the attempts of the tribunes had. The war

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[1] Livy, *loc. cit.*

[2] Livy, II, 44: "Et unum vel adversus omnes satis esse . . . quatuorque tribunorum adversus unum."

[3] Dionys., IX, 562.

[4] Livy, *loc. cit.*; Dionys., *loc. cit.*

[5] Livy, II, 48: "Captivum agrum plebi, quam maxime aequaliter darent. Verum esse habere eos quorum sanguine ac sudore partus sit. Aspernati Patres sunt."

with Vaii which, according to Livy, now took place hindered for a while any agrarian movements; but, in 474, the tribunes Gaius Considius and Titus Genucius made a fruitless attempt at distribution, and, in 472, Dionysius speaks of a bill brought forward by Cn. Genucius which is probably the same bill.

In 468, the two consuls, Valerius and Aemilius, faithfully supported the tribunes in their demand[1] for an agrarian law. The latter seems to have supported the tribunes because he was angry that the senate had refused to his father the honor of a triumph; Valerius, because he wished to conciliate the people for having taken part in the condemnation of Cassius.

Dionysius, according to his custom, takes advantage of the occasion to write several long speeches here, and one of them is valuable to us. He causes the father of Aemilius to set forth in a formal speech the true character of the agrarian laws and the right of the state to again assume the lands which had been taken possession of. He further says: "that it is a wise policy[2] to proceed to the division of the lands in order to diminish the constantly increasing number of the poor, to insure a far greater number of citizens for the defense of the country, to encourage marriages, and, in consequence, to increase the number of children and defenders of the republic." We see in this speech the real purpose, the germ, of all the ideas which Licinius Stolo, the Gracchi, and even Cæsar, strove to carry out. But the Roman aristocracy was too blind to comprehend these words of wisdom. All these propositions were either defeated or eluded.

Lex Icilia. In the year 454,[3] Lucius Icilius, one of the tribunes for that year, brought forward a bill that the Aventine hill should be conveyed to the plebeians as their personal and

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[1] Livy, II, 61, 63, 64.

[2] Dionys., IX, 606, 607; Livy, III, 1.

The authorities are somewhat conflicting at this point, and I have followed the account of Dionysius.

[3] Schwegler, *Römische Geschichte,* II, 484; Dionys., X, 31, p. 657, 43.

especial property.[1] This hill had been the earliest home of the plebeians, yet they had been surrounded by the lots and fields of the patricians. That part of the hill which was still in their possession was now demanded for the plebeians. It was a small thing for the higher order to yield this much, as the Aventine stood beyond the Pomoerium,[2] the hallowed boundary of the city, and, at best, could not have had an area of more than one-fourth of a square mile, and this chiefly woodland. The consuls, accordingly, made no hesitation about presenting the bill to the senate before whom Icilius was admitted to speak in its behalf. The bill was accepted by the senate and afterwards confirmed by the Centuries.[3] The law provided,—"that all the ground which has been justly acquired by any persons shall continue in the possession of the owners, but that such part of it as may have been usurped by force or fraud by any persons and built upon, shall be given to the people; those persons being repaid the expenses of such buildings by the estimation of umpires to be appointed for that purpose, and that all the rest of the ground belonging to the public, be divided among the people, they paying no consideration for the same."[4] When this was done the plebeians took possession of the hill with solemn ceremonies. This hill did not furnish homes for all the plebeians, as some have held; nor, indeed, did they wish to leave their present settlements in town or country to remove to the Aventine. Plebeians were already established in almost all parts of the city and held, as vassals of the patricians, considerable portions of Roman territory. This little hill could never have furnished[5] homes of any sort to the whole plebeian popula-

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[1] Dionys., X, 31, l. 13; Ihne, *Hist. of Rome*, I, 191, note; Lange, *Röm. Alter.*, I, 619. Also see art. in Smith's *Dict. of Antiquities.*

[2] *I. e.* outside of the '*quadrata*' but ἐμπεριεχόμενος τῇ πόλεις, Dionys., X, 31, l. 18: "pontificale pomoerium, qui auspicato olim quidem omnem urbem ambiebat praeter Aventinum." Paul. ex Fest., p. 248, Müll.

[3] Dionys., X, 32. [4] Dionys., X, 32. [5] Momm., I, 355.

tion. What it did do was to furnish to the plebeians a trysting place in time of strife with their patrician neighbors, where they could meet, apart and secure from interruption, to devise means for resisting the encroachments of the patricians and to further establish their rights as Roman citizens. Thus a step toward their complete emancipation was taken. For a moment the people were soothed and satisfied by their success, but soon they began to clamor for more complete, more radical, more general laws. An attempt seems to have been made in 453 to extend the application of the *lex Icilia* to the *ager publicus*,[1] in general, but nothing came of it. In 440, the tribune, Petilius, proposed an agrarian law. What its conditions were Livy has not informed us, but has contented himself with saying that "Petilius made a useless attempt to bring before the senate a law for the division of the domain lands."[2] The consuls strenuously opposed him and his effort came to naught.

In our review of the agrarian agitation we must mention the forceless and insignificant attempt made by the son of Spurius Melius, in 434. Again, in 422, we find that other attempts were made which availed nothing. Yet the tribunes who attempted thus to gain the good will of the people set forth clearly the object which they had in view in bringing forward an agrarian bill. Says Livy; "They held out the hope to the people of a division of the public land, the establishment of colonies, the levying of a *vectigal* upon the possessors, which *vectigal* was to be used[3] in paying the soldiers."

In the year 419, and again in 418, unavailing attempts were made for the division of lands among the plebeians.

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[1] Dionys., X, 34.

[2] Livy, IV, 12: Neque ut de agris dividendis plebi referrent consules ad senatum pervincere potuit. . . . Ludibrioque erant minae tribuni.

[3] "Agri publici dividendi, coloniarumque deducendarum ostentatae spes, et vectigali possessoribus imposito, in stipendium militum erogandi aeris." Livy, IV, 36.

Spurius Maecilius and Spurius Metilius, the tribunes[1] for the year 412, proposed to give to the people, in equal lots, the conquered lands. The patricians ridiculed this law, stating that Rome itself was founded upon conquered soil and did not possess a single acre of land that had not been taken by force of arms, and that the people held nothing save that which had been assigned by the republic. The object, then, of the tribunes was to distribute the fortunes of the entire state. Such vapid foolishness as this failed not of the effect which the patricians aimed at. Appius Claudius counselled the adoption of the excellent means invented by his grandfather. Six tribunes were bought over by the caresses, flatteries, and money of the patricians and opposed their vetoes to their colleagues who were thus compelled to retire.[2]

In the following year, 411, Lucius Sextius, in no way discouraged by the ill success of his predecessors, proposed the establishment of a colony at Bolae, a town in the country of the Volscians, which had been recently conquered. The patricians[3] opposed this by the same method which they had adopted in the preceding case, the veto by tribunes. Livy criticises the impolitic opposition of the patricians in these words: "This was a most seasonable time, after the punishment of the mutiny, that the division of the territory of Bolae should be presented as a soother to their minds; by which proceeding they would have diminished their eagerness for an agrarian law, which tended to expel the patricians from the public land unjustly possessed by them. Then this very indignity exasperated their minds, that the nobility persisted not only in retaining the public lands, which they got possession of by force, but would not even grant to the commons the unoccupied land lately taken from the enemy, and which would, like the rest,[4] soon become the prey of the few."

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[1] Livy, *loc. cit.*
[2] Livy, IV, 48.
[3] Livy, IV, 49.
[4] Livy, IV, 51.

In 409, Icilius, without doubt a member of that plebeian family which had furnished so many stout defenders of the liberties of the people, was elected tribune of the people and brought forward an agrarian bill, but a plague broke out and hindered any further action. In 407, the tribune, Menius, introduced an agrarian bill and declared that he would oppose the levies until the persons who unjustly held the public domains consented to a division. A war broke out and agrarian legislation was drowned amid the din of arms. Some years now elapsed without the mention of any agrarian laws. The siege of Veii commenced in 406 and lasted for six years, during which time military law was established, giving occupation and some sort of satisfaction to the plebeians. In 397, an agrarian movement was set on foot, but the plebeians were partially satisfied by being allowed to elect one of their number as *tribunus consularis* for the following year, thus obtaining a little honor but no land. After the conquest of Veii, there was a movement on the part of the plebeians to remove from Rome and settle upon the confiscated territory of the Veians; this was only staid by concessions on the part of the patricians. A decree of the senate was passed,—"that seven jugera, a man, of Vientian territory, should be distributed to the commons and not only to the fathers of families, but also that all persons in their house in the state of freedom should be considered, and that they might be willing to rear up children[1] with that prospect." In 384, six years after the conquest of Rome by the Gauls, the tribunes of the year proposed a law for the division of the Pomptine territory (*Pomptinus Ager*) among the plebeians. The time was not a favorable one for the agitation of the people, as they were busy with the reconstruction of their houses laid waste by the Gauls, and the movement came to nothing. The tribune, Lucius Licinius, in 383, revived this movement but it was not successfully carried till the year 379,

[1] Livy, VI, 5.

when the senate, well disposed towards the commons by reason of the conquest of the Volscians, decreed the nomination of five commissioners to divide the Pomptine territory[1] among the plebs. This was a new victory for the people and must have inspired them with the hope of one day obtaining in full their rights in the public domains.

We have now passed in review the agrarian laws proposed and, in some cases, enacted between the years 485 and 376, *i. e.* between the *lex Cassia* and the *lex Licinia*, which the greater part of the historians have neglected. We have now come to the propositions of that illustrious plebeian whose laws, whose character, and whose object have been so diversely appreciated by all those persons who have studied in any way the constitutional history of Rome. We wish to enter into a detailed examination of the *lex Licinia*, but before so doing have deemed it expedient to thus pass in review the agrarian agitations. The result of this work has, we trust, been a better understanding of the real tendency, the true purpose, of the law which is now to absorb our attention. It was no innovation, as some writers of the day assert, but in reality confined itself to the well beaten track of its predecessors, striving only to make their attainments more general, more substantial and more complete.

Extension of Territory by Conquest up to the Year 367 B. C.

1. Coreoli, captured in 442.
2. Bolae, captured in 414.
3. Labicum, captured in 418.
4. Fidenae, captured in 426 and all the territory confiscated.
5. Veii, captured in 396. This was the chief town of the Etruscans, equal to Rome in size, with a large tributary country; territory confiscated.

Approximate amount of land added to the Roman domain, 150 square miles.

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[1] Quinque viros Pomptino agro dividendo. Livy, VI, 21.

Colonies Founded between 454 *and* 367.

CIVIC COLONIES.

COLONIES.	PLACE.	DATE.	NO. OF COLONISTS.	NO. OF JUG. TO EACH.	TOTAL NO. OF JUG.	ACRES.
Labici.	Latium.	418	1500	2	3000	1875
			LATIN COLONIES.			
Ardea.	Latium.	442	300	2	600	375
Satricum.	"	385	300	2	600	375
Sutrium.	Etruria.	383	300	2	600	375
Nepete.	"	383	300	4	1200	750
Setia.	Latium.	382	300	4	1200	750
				Total.....	7200	4500

SEC. 7.—LEX LICINIA.

Party lines were, at the time of the enactment of the Licinian Law, strongly marked in Rome. One of the tribunes chosen after the return of the plebeians from Mons Sacer was a Licinius. The first military tribune with consular power elected from the plebeians was another Licinius Calvus. The third great man of this distinguished family was Caius Licinius Calvus Stolo, who, in the prime of life and popularity, was chosen among the tribunes of the plebs for the seventh year following the death of Manlius the Patrician. Another plebeian, Lucius Sextius by name, was chosen tribune at the same time. If not already, he soon became the tried friend of Licinius. Sextius was the younger but not the less earnest of the two. Both belonged to that portion of the plebeians supposed to have been latterly connected with the liberal patricians. The more influential and by far the more reputable members of the lower estate were numbered in this party. Opposed to it were two other

parties of plebeians. One consisted of the few who, rising to wealth or rank, cast off the bonds uniting them to the lower estate. They preferred to be upstarts among patricians rather than leaders among plebeians. As a matter of course, they became the parasites of the illiberal patricians. To the same body was attached another plebeian party. This was formed of the inferior classes belonging to the lower estate. These inferior plebeians were generally disregarded by the higher classes of their own estate as well as by the patricians of both the liberal and illiberal parties. They were the later comers, or the poor and degraded among all. As such they had no other resource but to depend on the largesses or the commissions of the most lordly of the patricians. This division of the plebeians is a point to be distinctly marked. While there were but two parties, that is the liberal and the illiberal among the patricians, there were no less than three among the plebeians. Only one of the three could be called a plebeian party. That was the party containing the nerve and sinew of the order, which united only with the liberal patricians, and with them only on comparatively independent terms. The other two parties were nothing but servile retainers of the illiberal patricians.

It was to the real plebeian party that Licinius belonged, as also did his colleague Sextius,[1] by birth. A tradition of no value represented the patrician and the plebeian as being combined to support the same cause in consequence of a whim of the wife and daughter through whom they were connected. Some revolutions, it is true, are the effect of an instant's passion or an hour's weakness. Nor can they then make use of subsequent achievements to conceal the caprices or the excitements in which they originated. But a change, attempted by Licinius with the help of his father-in-law, his colleague, and a few friends reached back one hundred years and more (B. C. 486) to the law of the martyred Cassius, and

[1] Livy, VI, 34.

forward to the end of the Commonwealth. It opened new honors as well as fresh resources to the plebeians.

Probably the tribune was raised to his office because he had shown the determination to use its powers for the good of his order and of his country. Licinius and Sextius together brought forward the three bills bearing the name of Licinius as their author. One, says the historian, ran concerning debts. It provided that, the interest already[1] paid being deducted from the principal, the remainder should be discharged in equal installments within three years. The statutes against excessive rates of interest, as well as those against arbitrary measures of exacting the principal of a debt, had utterly failed. It was plain, therefore, to any one who thought upon the matter,—in which effort of thought the power of all reformers begins,—that the step to prevent the sacrifice of the debtor to the creditor was still to be taken. Many of the creditors themselves would have acknowledged that this was desirable. The next bill of the three related to the public lands. It prohibited any one from occupying more than five hundred jugera, about 300 acres; at the same time it reclaimed all above that limit from the present occupiers, with the object of making suitable apportionments among the people[2] at large. Two further clauses followed, one ordering that a certain number of freemen should be employed on every estate; another forbidding any single citizen[3] to send out more than a hundred of the larger, or five hundred of the smaller cattle to graze upon the public pastures. These latter details are important, not so much in relation to the bill itself

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[1] Livy, VI, 35: "unam de aere alieno, ut deduco eo de capite, quod usuris pernumeratum esset, id, quod superesset, triennio aequis portionibus persolveretur."

[2] Livy, VI, 35; Niebuhr, III, p. 16; Varro, De R. R., 1: "Nam Stolonis illa lex, quae vetat plus D jugera habere civem Romanorum." Livy, VI, 35: "alteram de modo agrorum, ne quis plus quingenta jugera agri posideret." Marquardt u. Momm., *Röm. Alterthümer*, IV, S. 102.

[3] Appian, *De Bello Civile*, I, 8.

as to the simultaneous increase of wealth and slavery which they plainly signify. As the first bill undertook to prohibit the bondage springing from too much poverty, so the second aimed at preventing the oppression springing from too great opulence. A third bill declared the office of military tribune with consular power to be at an end. In its place the consulate was restored with full[1] provision that one of the two consuls should be taken from the plebeians. The argument produced in favor of this bill appears to have been the urgent want of the plebeians to possess a greater share in the government than was vested in their tribunes, aediles, and quaestors. Otherwise, said Licinius and his colleague, there will be no security that our debts will be settled or that our lands will be obtained.[2] It would be difficult to frame three bills, even in our time, reaching to a further, or fulfilling a larger reform. "Everything was pointed against the power of the patricians[3] in order to provide for the comfort of the plebeians." This to a certain degree was true. It was chiefly from the patrician that the bill concerning debts detracted the usurious gains which had been counted upon. It was chiefly from him that the lands indicated in the second bill were to be withdrawn. It was altogether from him that the honors of the consulship were to be derogated. On the other hand the plebeians, save the few proprietors and creditors among them, gained by every measure that had been proposed. The poor man saw himself snatched from bondage and endowed with an estate. He who was above the reach of debt saw himself in the highest office of the state. Plebeians with reason exulted. Licinius evidently designed reuniting the divided members of the plebeian body. Not one of them, whether rich or poor, but seems called back by these bills to stand with his own order from that time on.

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[1] Livy, VI, 35; See Momm., I, 382; Duruy, *Hist. des Romains*, II, 78.

[2] Livy, VI, 37.

[3] Livy, VI, 35: "creatique tribuni Caius Licinius et Lucius Sextius promulgavere leges adversus opes patriciorum et pro commodis plebis."

If this supposition was true, then Licinius was the greatest leader whom the plebeians ever had up to the time of Cæsar. But[1] from the first he was disappointed. The plebeians who most wanted relief cared so little for having the consulship opened to the richer men of their estate that they would readily have dropped the bill concerning it, lest a demand should endanger their own desires. In the same temper the more eminent men of the order, themselves among the creditors of the poor and the tenants of the domain, would have quashed the proceedings of the tribunes respecting the discharge of debt and the distribution of land, so that they carried the third bill only, which would make them consuls without disturbing their possessions. While the plebeians continued severed from one another, the patricians drew together in resistance to the bills. Licinius stood forth demanding, at once, all that it had cost his predecessors their utmost energy to demand, singly and at long intervals, from the patricians. Nothing was to be done but to unite in overwhelming him and his supporters. "Great things were those that he claimed and not to be secured without the greatest contention."[2] The very comprehensiveness of his measures proved the safeguard of Licinius. Had he preferred but one of these demands, he would have been unhesitatingly opposed by the great majority of the patricians. On the other hand he would have had comparatively doubtful support from the plebs. If the interests of the poorer plebeians alone had been consulted, they would not have been much more active or able in backing their tribunes, while the richer men would have gone over in a body to the other side with the public tenants and the private creditors among the patricians. Or, supposing the case reversed and the bill relating to the consulship brought forward alone, the debtors and the homeless citizens would have given the bill too little help with

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[1] Ihne, I, 314.

[2] Livy, VI, 35: "Cuncta ingentia, et quae sine certamine obtineri non possent."

hands or hearts to secure its passage as a law. The great encouragement therefore to Licinius and Sextius must have been their conviction that they had devised their reform on a sufficiently expanded scale. As soon as the bills were brought forward every one of their eight colleagues vetoed their reading. Nothing could be done by the two tribunes except to be resolute and watch for an opportunity for retaliation. At the election of the military tribunes during that year, Licinius and Sextius interposed[1] their vetoes and prevented a vote being taken. No magistrates could remain in office after their terms expired, whether there were any successors elected or not to come after them. The commonwealth remained without any military tribunes or consuls at its head, although the vacant places were finally filled by one *interrex* after another, appointed by the senate to keep up the name of government and to hold the elections the moment the tribunes withdrew their vetoes, or left their office. At the close of the year Licinius and Sextius were both re-elected but with colleagues on the side of their antagonists. Some time afterwards it became necessary to let the other elections proceed. War was threatening,[2] and in order to go to the assistance of their allies Licinius and Sextius withdrew their vetoes and ceased their opposition for a time. Six military tribunes were chosen, three from the liberal and three from the illiberal patricians. The liberals doubtless received all the votes of the plebeians as they had no candidates. They had in all probability abstained from running for an office, bills for the abolition of which were held in abeyance. They showed increasing inclination to sustain Licinius and his colleague, both by re-electing them year after year and by at length choosing three other tribunes with them in favor of the bills. The prospects of the measure were further brightened by the election of Fabius Ambustus, the father-in-law of Licinius and his zealous sup-

[1] Livy, VI, 35.

[2] Livy, VI, 36.

porter, to the military[1] tribunate. This seems to have been the seventh year following the proposal of the bills. This can not be definitely determined, however. During this long period of struggle, Licinius had learned something. It was constantly repeated[2] in his hearing that not a plebeian in the whole estate was fit to take the part in the auspices and the religious ceremonies incumbent upon the consuls. The same objections had overborne the exertions of Caius Canuleius three-quarters of a century before. Licinius saw that the only way to defeat this argument was by opening to the plebeians the honorable office of *duumvirs*, whose duty and privilege it was[3] to consult the Sibyline books for the instruction of the people in every season of doubt and peril. They were, moreover, the presiding officers of the festival of Apollo, to whose inspirations the holy books of the Sibyl were ascribed, and were looked up to with honor and respect. This he did by setting forth an additional bill, proposing the election of *decemvirs*.[4] The passage of this bill would forever put to rest one question at least. Could he be a decemvir, he could also be a consul. This bill was joined to the other three which were biding their time. The strife went on. The opposing tribunes interposed their vetoes. Finally it seems that all the offices of tribune were filled with partisans of Licinius, and the bills were likely to pass when Camillus, the dictator, swelling with wrath against bills, tribes and tribunes,[5] came forward into the forum. He commanded the tribunes to see to it that the tribes cast no more votes. But on the contrary they ordered the people to continue as they had begun. Camillus ordered his lictors to break up the assembly and proclaim that if a man lingered in the forum, the dictator would call out every man fit for service and march

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[1] Livy, VI, 36. Fabius quoque tribunis militum, Stolonis socer, quarum legum auctor fuerat, earum sua.

[2] Livy, *loc. cit.* [3] Appian, *De Bell. Civ.*, I, 9.

[4] Momm., I, 240: "decemviri sacris faciundis." Lange, *loc. cit.*

[5] Livy, VI, 38; Momm., *loc. cit.*

from Rome. The tribunes ordered resistance and declared that if the dictator did not instantly recall his lictors and retract his proclamation, they, the tribunes, would, according to their right, subject him to a fine five times larger than the highest rate of the census, as soon as his dictatorship expired. This was no idle threat, and Camillus retreated so fairly beaten as to abdicate immediately under the pretense of faulty auspices.[1] The plebeians adjourned satisfied with their day's victory. But before they could be again convened some influence was brought to bear upon them so that when the four bills were presented only the two concerning land and debts were accepted. This was nothing less than a fine piece of engineering on the part of the patricians to defeat the whole movement and could have resulted in nothing less. Licinius was disappointed but not confounded. With a sneer at the selfishness as well as the blindness of those who had voted only for what they themselves most wanted he bade them take heed that they could not eat if they would not drink.[2] He refused to separate the bills. The consent to their division would have been equivalent to consenting to the division of the plebeians. His resolution carried the day. The liberal patricians as well as the plebeians rallied to his support. A moderate patrician, a relation of Licinius, was appointed dictator, and a member of the same house was chosen master of the horse. These events prove that the liberal patricians were in the majority. Licinius and Sextius were re-elected for the tenth time, A. C. 366, thus proving that the plebeians had decided to eat and drink.[3]

The fourth bill, concerning the decemvirs was almost instantly laid before the tribes and carried through them. It was accepted by the higher assemblies and thus became a law. It is not evident why this bill was separated from the

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[1] Livy, VI, 38; Momm., *loc. cit.*

[2] Dion Cassius, Fragment, XXXIII, with Reimer's note.

[3] Livy, VI, 42.

others, especially when Licinius had declared that they should not be separated. Possibly it was to smooth the way for the other three more weighty ones, especially the bill concerning the consulship.[1] There seems to have been an interruption here caused by an invasion of the Gauls.[2] As soon as this was over the struggle began again. The tribes assembled. "Will you have our bills?" asked Licinius and Sextius for the last time. "We will," was the reply. It was amid more violent conflicts, however, than had yet arisen that the bills became laws[3] at last.

It takes all the subsequent history of Rome to measure the consequences of the Revolution achieved by Licinius and Sextius; but the immediate working of their laws could have been nothing but a disappointment to their originators and upholders. We can tell little or nothing about the regard paid to the *decemvirs*. The priestly robes must have seemed an unprecedented honor to the plebeian. For some ten years the law regarding the consulship was observed, after which time it was occasionally[4] violated, but can still be called a success. The laws[5] of relief, as may be supposed of all such sumptuary enactments, were violated from the first. No general recovery of the public land from those occupying more than five hundred[6] jugera ever took place. Consequently there was no general division of land among the lackland class. Conflicting claims and jealousy on the part of the poor must have done much to embarrass and prevent

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[1] Livy, VI, 42: et comitia consulum adversa nobilitate habita, quibus Lucius Sextius de plebe primus consul factus.

[2] Livy, *loc. cit.*

[3] Livy, VI, 42; Ovid, Faustus, I, 641, seq.:

> "Furius antiquam populi superator Hetrusci
> Voverat et voti solverat ante fidem
> Causa quod a patribus sumtis secesserat annis
> Vulgus; et ipsa suas Roma timebat opes."

[4] Momm., I, 389. [5] Momm., I, 384.

[6] Arnold, *Roman History*, II, 35; Ihne, *Essay on the Roman Constitution*, p. 72. Ihne, *Roman Hist.*, I, 332–334. Long, I, ch. XI. Lange, *loc. cit.*

the execution of the law. No system of land survey to distinguish between *ager publicus* and *ager privatus* existed. Licinius Stolo himself was afterwards convicted of violating his own law.[1] The law respecting debts met with much the same obstacles. The causes of embarrassment and poverty being much the same and undisturbed, soon reproduced the effects which no reduction of interest or installment of principal could effectually remove. It is not our intention, however, to express any doubt that the enactments of Licinius, such as they were, might and did benefit the small farmer and the day laborer.[2] Many were benefited. In the period immediately following the passing of the law, the authorities watched with some interest and strictness over the observance of its rules and frequently condemned the possessors of large herds and occupiers of public domain to heavy fines.[3] But in the main the rich still grew richer and the poor and mean, poorer and more contemptible. Such was ever the liberty of the Roman. For the mean and the poor there was no means of retrieving their poverty and degradation.

These laws, then, had little or no effect upon the domain question or the re-distribution of land. They did not fulfil the evident expectation of their author in uniting the plebeians into one political body. This was impossible. What they did do was to break up and practically abolish the patriciate.[4] Henceforth were the Roman people divided into rich and poor only.

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[1] Livy, VII, 16: "Eodem anno Caius Licinius Stolo a Marco Popillio Laenate sua legi decem milibus aeris est damnatus, quod mille jugerum agri cum filio possideret, emancipandoque filium fraudem legi fecisset."

Appian, *Bell. Civ.*, 1, 8; "*τὴν γῆν ἐς τοὺς οἰκείους επὶ ὑποκρίσει διένεμον.*"

[2] Momm., I, 389.

[3] Momm., I, 389, 390.

[4] Momm., I, 389, 390.

Sec. VIII.—Agrarian Movements between 367 and 133.

The first agrarian movement after the enactment of lex Licinia took place in the year 338, after the battle of Veseris in which the Latini and their allies were completely conquered. According to Livy,[1] the several peoples engaged in this rebellion were mulcted of a part of their land which was divided among the plebeians. Each plebeian receiving an allotment in the territory of the Latini had 2 jugera assigned him, while those in Privernum received $2\frac{3}{4}$, and those in Falernian territory received 3 jugera each (p. 252). This distribution of domain lands seems to have been spontaneous on the part of the senate. But it led to grave consequences as the Latini, indignant at their being despoiled of their lands, resorted again to arms. The plebeians, moreover, were roused to the verge of rebellion by the consul Aemilius who had been alienated from the patricians by their refusing him a triumph, and now strove to ingratiate himself with the commons by making them dissatisfied with their meagre allotments. The law, however, was carried into execution, and thus showed that the senate acquiesced in and even initiated laws when they did not in any way interfere with their possession, but referred only to territory which had just been conquered.

Agrarian Law of Curius. Beyond the distribution of the *ager publicus* which formed the basis of the numerous colonies of this period and which will be considered in their proper place, the next agrarian movement was that of Curius Dentatus. At the close of the third Samnite War the people were in great distress, as agricultural pursuits had been greatly interrupted by continued warfare. Now there seemed to be a chance of remedying this. Large tracts of land had been taken from the Samnites and Sabines, and it was now at the

[1] Livy, VIII, 11, 12.

disposal of the Roman[1] state for purposes of colonization and division among the impoverished citizens. In the year 287,[2] a bill was introduced by Manius Curius Dentatus, the plebeian consul for this year, and hero of the third Samnite War. He proposed giving to the citizens assignments of land in the Sabine country of seven jugera[3] each. It is certain that this bill met with great opposition but we have not been informed as to the causes.[4] It is safe to conclude, however, that the question was whether assignments of land with full right of property should be made in districts which the great land-owners wished to keep open for occupation in order that they might pasture herds thereon. The senate and the nobility so bitterly opposed the plan that the plebeians despairing of success, withdrew to the Janiculum and only on account of threatening war did they consent to the proposals of Quintus Hortensius.[5] By this move the *lex Hortensia*[6] was passed and, doubtless, the *agraria lex* was enacted at the same time although

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[1] Ihne, I, 447.

[2] I have followed Ihne and Arnold in giving this date, but there is reason for placing it later as Valerius Maximus says, IV, 3, 5: "Manius Curius cum Italia Pyrrhum regem exegisset . . . . decretis a senatu septenis jugeribus agri populo."

[3] "Manii Curii nota conscio est, perniciosum intellegi civem cui septem jugera non essent satis." Pliny, *Hist. Nat.*, XVIII.; Aurelius Victor, De Viris Illus.: Septenis "jugeribus viritim dividendis, quibus qui contentus non esset, eum perniciosum intellegi civem, nota et praeclare concione Manius Curius dictitabat." The same author speaks of four jugera being given by Curius, "Quaterna dono agri jugera viritim populo dividit." Juvenal implies a distribution of two jugera; Sat. XIV, V, 161–164:

> "Mox etiam fructis aetate, ac Punica passis
> Proelia vel Pyrrhum immanem glaeosque Molossos,
> Tandem pro multis vix jugera bina dabantur
> Vulneribus Merces ea sanguinis atque labores."

[4] Appian, III, 5: Zonarius, VIII, 2.

[5] Ihne, I, 447.

[6] Gellius, XV, 27: "Postea lex Hortensia late, qua cautum est, ut plebisipa universum populum tenerent." Marquardt u. Momm., *Röm. Alter.*, IV, 102.

nothing definite is known concerning this point. The people must have been pacified by some other means than the mere granting of more political power. Nothing less than a share of the conquered territory would have satisfied them or induced them to return and again take up the burden of war.

Lex Flaminia. Fifty four years after the enactment of the law of Curius Dentatus, in the year 232, the tribune Caius Flaminius,[1] the man who afterwards was consul and fell in the bloody battle of lake Trasimenus, brought forward and carried a law for the distribution of the *Gallicus Ager*[2] among the plebeians. This territory[3] had been taken from the Galli Semnones fifty-one years before and was now occupied as pasture land by some large Roman families. This territory lay north of Picenum and extended as far as Ariminum[4] (Rimini.) This was an excellent opportunity for awarding lands to Roman veterans for military service, and thus to establish a large number of small farms, rather than to leave the land in the possession of the rich who resided in Rome and, consequently, formed no frontier protection against the inroads of barbarians from the north. By alloting the land, the Latin race and Latin tongue would help to Romanize territory already conquered by Roman arms. The only thing opposed to this was the possession of the land by the aristocracy. But they had no legal claim to the land and could be dispossessed without any indemnification. The senate opposed this measure to the utmost of their ability and, after all other means had failed, threatened to send an army against the tribune if he urged his bill through the tribes. They further induced his father to make use of his *potestas* in restraining his son.[5] When Flaminius was bringing up the bill for decision he was arrested by his father. "Come down, I bid thee," said the father. And the son humbled "by private

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[1] Polyb., II, 21, 8. [2] Varro, De R. R., I, 2; De L. L., VI, 5.
[3] Ihne, IV, 26. See Long, I, 157, who disputes this statement.
[4] Varro, De R. R., I, 2.; De L. L., VI, 5. [5] Val. Max., V, 4, 5.

authority,"[1] obeyed. It finally became necessary for the plebeians to take their stand on the formal constitutional law and to cause the *agraria lex* to be passed by a vote of the assembly of the tribes without a previous resolution or subsequent approbation of the senate.[2] Polybius dates a change for the worse in the Roman constitution from this time.[3] The relief of the plebeians was further promoted by the foundation[4] of new colonies.

In the year 200, after Scipio returned as conqueror of Carthage, the senate decreed that he should be assigned some lands for his soldiers, but Livy does not tell us where they were to be assigned; whether they were to be a part of the ancient *ager publicus* or of the territory of Carthage, Sicily, or Campania, *i. e.* the new conquests of Rome. He merely says that for each year of service in Spain or Africa the soldiers were to receive two jugera each, and that[5] the distributions should be made by the *decemvirs.* In spite of the insufficiency of these details the passage reveals to us two important facts:

1. Decemvirs as well as triumvirs were at times appointed to make distributions of domain lands in accordance with the provisions of an agrarian law.

2. It reveals the profound modifications which Roman customs had passed through. The riches which began at this time to flow into Rome by reason of the many successful wars revolutionized the economic conditions of the city. It is not necessary to see only a proof of corruption in this tendency of all classes to grasp for riches and to desire luxury and ease. We must also consider that comfort was

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[1] Val. Max., V, 4, 5; Cicero, *De Juventute,* II, 17.

[2] Ihne, IV, 26; Cicero, *De Senectute,* 4.

[3] Polybius, II, 21. [4] Livy, Epit., XX, 19.

[5] "De agris militum ejus decretum, ut quod quisque eorum annos in Hispania aut in Africa militasset, in singulos annos bina jugera acciperet, eum agrum decemviri assignarent."

Livy, XXXI, 49.

more accessible and that the price of everything, especially of the necessaries of life, had increased. In consequence of this it was difficult for soldiers to support themselves with their pay. The presents of a few sesterces given them as prize money in no way made sufficient recompense for all the miseries and privations which they had passed through during their long absence. Grants of land were the only means of recompensing their military services. This is the first example that we have found of soldiers being thus rewarded, and it consequently initiated a custom which became most frequent especially in the time of the empire. Upon the conquest of Italy which followed the expedition of Pyrrhus, the Romans found themselves led into a long series of foreign wars; Sicily furnished the stepping-stone to Africa; Africa to Spain; all these countries becoming Roman provinces. As soon as the second Punic war closed, Hannibal formed an alliance with the king of Macedonia. A war-cloud rose[1] in the east. The Ætolians asked aid from Rome, and statesmen could foretell that it would be impossible for Roman armies not to interfere between Greece and Macedonia. But these countries had been from ancient times most intimately connected with the orient, *i. e.*, Asia, where the Seleucidae still ruled, so that a war with Greece, which was inevitable, could not fail to bring on a war with the successors of Alexander, and, these hostilities once engaged in, who could say where these accidents of war would cease, or when Roman arms could be laid aside? In this critical condition it was prudent to attach the soldiers to the republic by bonds and interests the most intimate, to make them proprietors and to assure subsistence to their families during their long absence. These wars did not much resemble those of the early republic which had for a theatre of war the country in the immediate vicinity of Rome.

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[1] Momm., II, 230–241.

The senate continued to take the initiative in agrarian movements. In 172, after the close of the wars against the Ligurians and Gauls, we again see the senate spontaneously decreeing a new division of the lands. A part of the territory of Liguria and Cisalpine Gaul was confiscated and a *senatus consultum* ordered a distribution of this land to the commons. The praetor of the city A. Atilius, was authorized to appoint *decemvirs*, whose names Livy gives, to assign ten jugera to Roman citizens and three jugera to Latin[1] allies. Thus the senate, with a newly-born sagacity, rendered useless the demands of the tribune and recognized the justice and the utility of the agrarian laws against which it had so long protested. Indeed, it justified the propositions of the first author of an agrarian law by admitting to a share in the conquered lands the Latin allies who had so often contributed to their growth. This is the last agrarian law which Livy mentions. The Persian war broke out in this year, and an account of it fills the remaining books of this author which have come down to us. However, prior to the proposition of Tiberius Gracchus, we find in Varro[2] the mention of a new assignment of land of seven jugera *viritim*, made by a tribune named Licinius in the year 144; but the author has given such a meagre mention of it that we are unable to determine where these lands were located. If we join to these facts the cession of public territories to the creditors of the state, in 200, we shall have mentioned all agrarian laws and distributions of territory which took place before the *lex Sempronia Tiberiana* in 133.

Condition of the Country at the time of the Gracchan Rogations. During the period between 367 and 133 we find no

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[1] Livy, XLII, 4: "Eodem anno, quum agri Ligustini et Gallici, quod bello captum erat, aliquantum vacaret, senatus-consultum factum ut is ager viritim ex senatus consulto creavit A. Atilius praetor urbanus. . . . Diversērunt dena jugera in singulos, sociis nominis Latini terna.

[2] Ihne, IV, 370.

record of serious disputes between the patricians and commons. Indeed, the senate usually took the lead in popular measures; lands were assigned without any demand on the part of the plebeians. We must not be deceived by this seeming harmony. In the midst of this apparent calm a radical change was taking place in Roman society. It is necessary for us to understand this new condition of affairs in the republic before it will be possible to comprehend the rogations of the Gracchi.

One of the greatest dangers to the republic at this time reveals itself in the claims[1] of the Italians. These people had poured out their blood for Rome; they had contributed more than the Romans themselves to the accomplishing of those rapid conquests which, after the subjugation of Italy, quickly extended the power of Rome. In what way had they been rewarded? After the terrible devastations which afflicted Italy in the Hannibalic war had ceased, the Italian allies found themselves ruined. Whilst Latium, which contained the principal part of the old tribes of citizens, had suffered comparatively little, a large portion of Samnium, Apulia, Campania, and more particularly of Lucania and Bruttium, was almost depopulated; and the Romans in punishing the unfaithful "allies" had acted with ruthless cruelty.[1] When at length peace was concluded, large districts were uncultivated and uninhabited. This territory, being either confiscated from the allies for taking part with Hannibal, or deserted by the colonists, swelled the *ager publicus* of Rome, and was either given to veterans[2] or occupied by Roman capitalists, thus increasing the revenues of a few nobles.

If a nation is in a healthful condition politically and economically so that the restorative vigor of nature is not impeded by bad restrictive laws, the devastations of land and losses of human life are quickly repaired. We might the

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[1] Livy, XXXI, 4, 1; Ihne, IV, 370–372.

[2] Livy, *loc. cit.*

more especially have expected this in a climate so genial and on a soil so fertile as that of Italy. But Roman laws so restricted the right of buying and selling land that in every Italian community none but members of that community, or Roman citizens, could[1] buy or inherit. This restriction upon free competition, by giving the advantage to Roman citizens, was in itself sufficient to ruin the prosperity of every Italian town. This law operated continually and unobservedly and resulted in placing,[2] year by year, a still larger quantity of the soil of Italy in the hands of the Roman aristocracy. In order to palliate the evils of conquest or at least to hide their conditions of servitude, the Romans had accorded to a part of the Italians the title of allies, and to others the privileges of *municipia.*[3] These privileges were combined in a very skillful manner in the interest of Rome, but this skill did not hinder the people from perceiving that they depended upon the mere wish of the conquerors and consequently were not rights, but merely favors to be revoked at will. The Latini, who had been the first people conquered by Rome and who had almost always remained faithful, enjoyed under the name of *jus Latii* considerable privileges. They held in great[4] part the civil and political rights of Roman citizens. They were able by special services individually to become Roman citizens and thus to obtain the full *jus Romanum.* There were other peoples who, although strangers to Latium, had been admitted, by reason of their services[5] to Rome, to participate in the benefits of the *jus Latii.* The other peoples, admitted merely to the *jus Italicum,* did not enjoy any of the civil or political rights of Roman citizens, nor any of the privileges of Latin[6] allies; at best they kept some souvenirs

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[1] Ihne, IV, 148. [2] Ihne, IV, 371.

[3] Ihne, IV, 354; Momm., 111, 277.

[4] Momm., I, 151–162; Ihne, IV, 179. Marquardt u. Momm., IV, 26–27, 63. [5] Livy, IX, 43, 23; Ihne, IV, 181.

[6] Ihne, IV, 185–186. Marquardt u. Momm., 46, 60.

of their departed independence in their interior administration, but otherwise were considered as subjects of Rome. And yet it was for the aggrandizement of this city that they shed their blood upon all the fields of battle which it pleased Rome to choose; it was for the glory and extension of the Roman power that they gained these conquests in which they had no share. Some who had attempted to regain their independence were not even accorded the humble privileges of the other people of Italy, but were reduced to the state of prefectures. These were treated as provinces and governed by prefects or proconsuls sent[1] out from Rome. Such were Capua, Bruttium, Lucania, the greater part of Samnium, and Cisalpine Gaul, which country, indeed, was not even considered as a part of Italy. Those who had submitted without resistance to the domination of the Romans, and had rendered some services to them, had bestowed upon them the title of *municipia*.[2] These *municipia* governed themselves and were divided into two classes:

(1.) *Municipia sine suffragio*, for example, Caere and Etruria, had only interior privileges; their inhabitants could not vote at Rome and, consequently, could not[3] participate in the exercise of sovereignty.

(2.) *Municipia cum suffragio* had, outside of their political and civil rights, the important right of voting[4] at Rome. These citizens of villages had then, as Cicero said of the citizens of Arpinum, two countries, one *ex natura*, the other *ex jure*. Lastly, there were some cities in the south of Italy, *i. e.* in Magna Graecia, that had received[5] the name of federated cities. They did not appear to be subject to Rome; their contingents of men and money were looked upon as voluntary[6] gifts; but, in reality, they were under the domination of Rome, and had, at Rome, defenders or patrons chosen because

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[1] Marquardt u. Momm., IV, 41–43.
[2] Ibid, IV, 26.
[3] Marquardt u. Momm., IV, 27–34.
[4] Ibid.
[5] Marquardt u. Momm., IV, 44.
[6] Marquardt u. Momm., IV, 45–46.

of their influence with the Roman citizens and charged with maintaining their interests. Such was the system adopted by Rome. It would have been easy for a person in the compass of a few miles to find villages having the *jus Latii*, others with simply the *jus Italicum*, colonies, prefectures, municipia *cum* et *sine suffragio*. The object of the Romans was evident. They planned to govern. Cities alike in interests and patriotic motives were separated by this diversity of rights and the jealousies and hatreds which resulted from it. Concord, which was necessary to any united and general insurrection, was rendered impossible between towns, some of which were objects of envy, others, of pity. Their condition, moreover, was such that all, even the most fortunate, had something to gain by showing themselves faithful; and all, even the most wretched, had something to fear if they did not prove tractable. These Italians, with all the varied privileges and burdens enumerated above, far outnumbered the Roman citizens.[1] A comparison of the numbers of the census of 115 and that of 70 shows that the numbers of Italians and Romans were[2] as three to two. All these Italians aspired to Roman citizenship, to enjoy the right to vote to which some of their number had been admitted, and the struggle which was sometime to end in their complete emancipation had already commenced. During the first centuries of Roman history, Rome was divided into two classes, patricians and plebeians. The plebeians by heroic efforts had broken down the barriers that separated them from the patricians. The privilege of intermarriage, the possibility of obtaining the highest offices of the state, the substitution of the *comitia tributa* for the other two assemblies, had not made of Rome "an unbridled democracy," but all these benefits obtained by tribunician agitation, all the far-reaching advances gained by force of laws and not

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[1] Momm., *Röm. Ge.*, II, 225. [2] Ihne, IV, 370.

of arms, had constituted at Rome a single people and created a true Roman nation. There were now at Rome only rich and poor, nobles and proletariat. With intelligence and ability a plebeian could aspire to the magistracies and thence to the senate. Why should not the Italians be allowed the same privilege? It was neither just nor equitable nor even prudent to exclude them from an equality of rights and the common exercise of civil [1] and political liberty. The Gracchi were the first to comprehend the changed state of affairs and the result of Roman conquest and administration in Italy. Their demands in favor of the Italians were profoundly politic. The Italians would have demanded, with arms in their hands, that which the Gracchi asked for them, had not this attempt been made. They failed; Fulvius [2] Flaccus, Marius,[3] and Livius Drusus [4] failed in the same attempt, being opposed both by the nobility and the plebs.

The agrarian laws, as we have seen, had been proposed by the senate, in the period which we are considering. How was it then that the Gracchi had been compelled to take the initiative and that the senate had opposed them? This contradiction is more apparent than real. It explains itself in great part by the following considerations. Upon the breaking down of the aristocracy of birth, the patriciate, the senate was made accessible to the plebeians who had filled the curule magistracies and were possessed of 800,000 sesterces. Knights were also eligible to the senate to fill vacancies, and it was this fact which caused the equestrian order to be called *seminarium senatus.* For some time the new nobles, in order to strengthen their victory and make it permanent, had formed an alliance with the plebeians. For this reason were made the concessions and distributions of land which the old senators were unable to hinder. These concessions were the work

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[1] Momm., Lange, Ihne, Long—as given.
[2] Momm., III, 132.
[3] Momm., III, 252, 422.
[4] Momm., III, 281.

of the plebeians who had been admitted to the senate. But when their position was assured and it was no longer necessary for them to make concessions to the commons in order to sustain themselves, they manifested the same passions that the patricians had shown before them. Livy has expressed the situation very clearly: "These noble plebeians had been initiated into the same mysteries, and despised the people as soon as they themselves ceased to be despised by the patricians."[1] Thus, then, the unity and fusion which had been established by the tribunician laws disappeared and there again existed two peoples, the rich and the poor.

If we examine into the elements of these two distinct populations, separated by the pride of wealth and the misery and degradation of poverty, we shall understand this. The new nobility was made up partially of the descendants of the ancient patrician *gentes* who had adapted themselves to the modifications and transformations in society. Of these persons, some had adopted the ideas of reform; they had flattered the lower classes in order to obtain power; they profited by their consulships and their prefectures to increase or at least conserve their fortunes. Others having business capacity gave themselves up to gathering riches; to usurious speculations which at this time held chief place among the Romans. Even Cato was a usurer and recommended usury as a means of acquiring wealth. Or they engaged in vast speculations in land, commerce, and slaves, as Crassus did a little later. The first mentioned class was the least numerous. To those nobles who gave their attention to money-getting must be added those plebeians who elevated themselves from the masses by means[2] of the curule magistracies. These were insolent and purse-proud, and greedy to increase their wealth by any means in their power. Next to these two divisions of the nobility came those whom the patricians had been

[1] Livy, XXII, 34.

[2] Ihne, IV, 354-356.

wont to despise and to relegate to the very lowest rank under the name of *aerarii*; merchants,[1] manufacturers, bankers, and farmers of the revenues. These men were powerful by reason of their union and community of interests, and money which they commanded. They formed a third order and even became so powerful as to control the senate and, at times, the whole republic. In the time of the Punic wars the senate had been obliged to let go unpunished the crimes committed by the publican Posthumius and the means which he had employed in order to enrich himself at the expense of the republic, because it was imprudent to offend[2] the order of publicans. Thus constituted an order or guild, they held it in their hands at will to advance or to withhold the money for carrying on wars or sustaining the public credit. In this way they were the masters of the state. They also grasped the public lands, as they were able to command such wealth that no individual could compete with them. They thus became the only farmers of the domain lands, and they did not hesitate to cease paying all tax on these. Who was able to demand these rents from them? The senate? But they either composed the senate or controlled it. The magistrates? There was no magistracy but that of wealth. The tribunes and the people? These they had disarmed by frequent grants of land of two to seven jugera each, and by the establishment of numerous colonies. This was beyond doubt the real reason for their frequent distributions. They had all been made from land recently conquered. The ancient *ager* had not been touched, and little by little the Licinian law had fallen into disuetude.

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[1] Ihne, IV, 354–356.

[2] Livy, XXV, 3: "Patres ordinem publicanorum in tali tempore offensum nolebant."

Extension of Territory by Conquest between 367 *and* 133.

1. Caere submitted in 353, yielding all southern Etruria to Rome.

2. Volcian territory and all Latium fell to Rome at the close of the Latin war in 339.

3. Capua, taken in 337.

4. Cales, taken in 334. In this struggle all Campania became Roman territory.

5. Sabine territory submitted in 290.

6. Tarentum, captured in 272.

7. Rhegium, captured in 270.

8. The Galli Senones were destroyed in 283 and their whole territory (Umbria) was confiscated.

9. In 293, Liguria and Transpadana Gallia were added to the Roman confederation.

10. In 222, Italy was extended to its natural boundary, the Alps, by the subjugation of the Gauls north of the Po. Of the entire territory of Italy, 93,640 square miles, fully one-third belonged to Rome. Thus, in the 287 years of the Republic, Roman territory had expanded from 115, to 31,200 square[1] miles.

At the close of the war with Hannibal, Rome further added to her territory by the confiscation of the greater part of the Gallic territory, Campania, Samnium, Apulia, Lucania, and Bruttii.

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[1] I have not here added Roman conquests outside of the peninsula of Italy, as these conquests were not treated as Roman territory until nearly a century later.

Colonies Founded between 367 *and* 133.

(*a*). Civic Colonies.

COLONIES.	PLACE.	DATES.	NO. OF C.	SIZE OF ALLOT.	JUGERA.	ACRES.
Antium.	Latium.	338	300	2	600	375
Anxur.	"	329	300	2	600	375
Minturnae.	Campania.	296	300	2	600	375
Sinuessa.	"	296	300	2	600	375
Sena Gallica.	Umbria.	283	300	6	1,800	1,125
Castrum Novum.	Picenum.	283	300	6	1,800	1,125
Aesium.	Umbria.	247	300	6	1,800	1,125
Alsium.	Etruria.	247	300	6	1,800	1,125
Fregenae.	"	245	300	6	1,800	1,125
Pyrgi.	"	191	300	6	1,800	1,125
Puteoli.	Campania.	194	300	6	1,800	1,125
Volturnum.	"	194	300	6	1,800	1,125
Liternum.	"	194	300	6	1,800	1,125
Buxentum.	Lucania.	194	300	6	1,800	1,125
Salernum.	Campania.	194	300	6	1,800	1,125
Sipontum.	"	194	300	6	1,800	1,125
Tempsa.	Bruttii.	194	300	4	1,200	750
Croton.	"	194	300	4	1,200	750
Potentia.	Picenum.	184	300	6	1,800	1,125
Pisaurum.	Umbria.	184	300	6	1,800	1,125
Parma.	Gall. Cisalp.	183	1,000	6	6,000	3,750
Mutina.	" "	183	1,000	6	6,000	3,750
Saturnia.	Etruria.	183	300	6	1,800	1,125
Graviscae.	"	181	300	5	1,500	687
Luna.	"	173	300	6	1,800	1,125
Auximum.	Picenum.	157	300	6	1,800	1,125
				Total...	38,900	30,312

(*b*). Latin Colonies.

COLONIES.	PLACE.	DATES.	NO. OF C.	SIZE OF ALLOT.	JUGERA.	ACRES.
Calles.	Campania.	334	300	4	1,200	750
Fregellae.	Latium.	328	300	4	1,200	750
Luceria.	Apulia.	314	300	4	1,200	750
Suessa.	Latium.	313	300	4	1,200	750
Pontiae.	Isle of Latium.	313	300	4	1,200	750
Saticula.	Samnium.	313	300	4	1,200	750
Sora.	Latium.	312	4,000	4	1,200	750
Alba.	"	303	6,000	6	36,000	22,500
Narnia.	Umbria.	299	300	6	1,800	1,125
Carseoli.	Sabini.	298	4,000	6	24,000	15,000
Venusia.	Apulia.	291	300	6	1,800	1,125
Hatria.	Picenum.	289	300	6	1,800	1,125
Cosa.	Campania.	273	1,000	6	6,000	3,750
Paestum.	Lucania.	273	300	6	1,800	1,125
Ariminum.	Agr. Gallicus.	268	300	6	1,800	1,125
Beneventum.	Samnium.	268	300	6	1,800	1,125
Firmum.	Picenum.	264	300	6	1,800	1,125
Aesernia.	Samnium.	263	300	6	1,800	1,125
Brundisium.	Calabria.	244	300	6	1,800	1,125
Spoletium.	Umbria.	241	300	6	1,800	1,125
Cremona.	Gaul.	218	6,000	6	36,000	22,500
Placentia.	"	218	6,000	6	36,000	22,500
Copiae.	Lucania.	193	300	6	1,800	1,125
Bononia.	Gaul.	192	3,000	6	18,000	11,250
Aquileia.	"	181	4,500	6	27,000	16,875
		Total.....			211,200	132,000
		Civic Colonies.....			38,900	30,312
		Grand Total.....			250,100	162,312 or 253.61 Sq. Mi.

Sec. 9.—Latifundia.

"After having pillaged the world as praetors or consuls during time of war, the nobles again pillaged their subjects as governors in time of peace;[1] and upon their return to Rome with immense riches they employed them in changing the modest heritage of their fathers into domains vast as provinces. In villas, which they were wont to surround with forests, lakes and mountains . . . where formerly a hundred families lived at ease, a single one found itself restrained. In order to increase his park, the noble bought at a small price the farm of an old wounded soldier or peasant burdened with debt, who hastened to squander, in the taverns of Rome, the modicum of gold which he had received. Often he took the land without paying anything.[2] An ancient writer tells us of an unfortunate involved in a law suit with a rich man because the latter, discommoded by the bees of the poor man, his neighbor, had destroyed them. The poor man protested that he wished to depart and establish his swarms elsewhere, but that nowhere was he able to find a small field where he would not again have a rich man for a neighbor. The nabobs of the age, says Columella, had properties which they were unable to journey round on horseback in a day, and an inscription recently found at Viterba, shows that an aqueduct ten miles long did not traverse the lands of any new proprietors. . . . The small estate gradually disappeared from the soil of Italy, and with it the sturdy population of laborers. . . . Spurius Ligustinus, a centurian, after twenty-two campaigns, at the age of more than

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[1] Cicero says these exactions were common and that the provinces were even restrained from complaining. Verres apologized for his exactions by saying that he simply followed the common example. In Verrem, II, 1–3, 17.

[2] "Parentes aut parvi liberi militum, ut quisque potentiori confinis erat, sedibus pellebantur." Sall., *Jugertha*, 41. Horace, Ode II, 18.

fifty years, did not have for himself, his wife, and eight children more than a jugerum of land and a cabin." [1]

To this masterly sketch quoted from Duruy, we can but add a few facts. Pliny affirms that under Nero only six men possessed the half of Africa.[2] Seneca, who himself possessed an immense fortune, says, concerning the rich men of his time, that they did not content themselves with possessing the lands that formerly had supported an entire people; they were wont to turn the course of rivers in order to conduct them through their possessions. They[3] desired even to embrace seas within their vast domains. We must here, it is true, make some allowance for rhetoric. So, too, in the writings of Petronius, some allowance for satire must be made, where he represents the clerk of Trimalchio making a report of that which has taken place in a single day upon one of the latter's farms near Cumae. Here on the 7th of the calends[4] of July, were born 30 boys and 40 girls; 500,000 bushels of wheat were harvested and 500 oxen were yoked. The clerk goes on to say that a fire had recently broken out in the *Gardens of Pompey*, when he is interrupted by Trimalchio asking when the *Gardens of Pompey* had been purchased for him, and is informed that they had been in his possession for a year.[5] So it appears that Trimalchio, in whom Petronius has personified the pride, the greed, and the vices of the rich men of his time, did not know that he was the possessor of a magnificent domain. In another place

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[1] Duruy, *Hist. des Romains*, II, 46–47.

[2] "Sex domini semissem Africae possidebant." *Hist. Nat.*, XVIII, 7.

[3] Seneca, Epist., 89.

[4] Petronius, Sat., 48: VII. calendas sextilis in praedio Cumano, quod est Trimalchionis, nati sunt pueri, XXX, puellae, XL; sublata in horreum, ex area, tritici millia modium quingenta; boves domiti quingenti . . . eodem die incendium factum est in hortis Pompeianis, ortum ex aedibus nastae, villici.

[5] Quid? inquit Trimalchio: quando mihi Pompeiani horti emti sunt? Anno priore, inquit actuarius. (*Ibid.* 53.)

Petronius causes Trimalchio to say that everything which could appeal to the appetite of his companions is raised upon one of his farms which he has not yet visited and which is situated in the neighborhood of Terracina and Tarentum, towns[1] which are separated by a distance of 300 miles. Finally, led on by his immoderate desire to augment his riches and increase his possessions, the hero of Petronius asks but one thing before he dies, *i. e.*, to add Apulia[2] to his domains; he, however, admits that he would not take it amiss to join Sicily to some lands which he owned in that locality or to be able, should envy not check him, to pass into Africa[3] without departing from his own possessions. All this has a basis of fact. Trimalchio would never have been created, had not the favorite freedmen of Nero crushed the people by their luxury, debauches, and scandals.

But the condition of society pictured by Seneca and Petronius is that of the first century of the Christian era and might not be taken to represent the condition of affairs in the second century B. C., had we not some data which go to prove the concentration of property, the disparity between classes, and the depopulation of Italy within the same century as the Gracchi. Cicero was not considered one of the richest men in Rome, yet he possessed many villas, and he has himself told us that one of them cost him 3,500,000 sesterces, about $147,000.[4] Cornelia, the mother of the Gracchi, had a country residence in the vicinity of Micenum which cost[5]

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[1] Vinum, inquit, si non placet, mutabo; vos illud, oportet faciatis. Deorum beneficio nōn emo, sed nunc, quidquid ad salivam facit, in suburbano nascitur eo quod ego adhuc non navi. Dicitur confine esse Tarracinensibus et Tarentinis.

[2] Quod si contigerit Apuliae fundos jungere, satis vivus pervenero, (*Ibid.* 77.)

[3] Nunc conjungere agellis Siciliam volo, ut quum Africam libuerit ire, per meos fines navigem. Sat., 48.

[4] Ad Fam., V, 6: "quod de Crasso domum emissem emi eam ipsam domum H. S., XXXV."

[5] Plutarch, *Life of Marius.*

75,000 drachmae ($14,000); Lucullus some years afterwards bought it for 500,200 drachmae ($100,040). According to Cicero,[1] Crassus had a fortune of 100,000,000 sesterces ($4,200,000). This does not astonish us when we see upon the *via Appia*, near the ruins of the circus of Caracalla and but a short distance from the Catacombs of St. Sebastian and the fountain of Aegeria, the still important remains of the tomb of Caecilia Metella, daughter of Metellus Creticus and wife of the tribune Crassus, as the inscription testifies. It is a vast "funereal fortress" constructed of precious marble, and which gives us the first example of the luxury afterwards so common among the Romans. Then, too, we remember that Crassus was wont to say that no one was rich who was not able to support an army with his revenues, to raise six legions and a great number of auxiliaries, both infantry and cavalry.[2]

Pliny confirms this statement concerning Crassus, but adds that Sulla was even richer.[3] Plutarch gives us fuller details and also explains the origin of the colossal fortune of Crassus. According to him Crassus had 300 talents ($345,000), with which to commence. Upon his departure for the Parthian war in which he lost his life, he made an inventory of his property and found that he was possessed of 7,100 talents, $8,165,000, double what Cicero attributes to him. How did Crassus increase his fortune so enormously? Plutarch says that he bought the property confiscated by Sulla at a very low figure. Then, he had a great number of slaves distinguished for their talents; lecturers, writers, bankers, business men, physicians, and hotel-keepers, who turned over to him the benefits which they realized in their diverse industries. Moreover, he had among his slaves 500 masons and architects. Rome was built almost

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[1] De Repub., III, 7: Cur autem, si pecuniae modus statuendus fuit feminis, P. Crassi filia posset habere, si unica patri esset, aeris millies, salva lege?

[2] Cicero, *Paradoxia*, VI.

[3] Pliny, *Hist. Nat.*, XXXIII, 10.

entirely of wood and the houses were very high, consequently fires were frequent and destructive. As soon as a fire broke out, Crassus hastened to the place with his throng of slaves, bought the now burning buildings—as well as those threatened—at a song, and then set his slaves to work extinguishing the fires. By this means he had become possessed of a large[1] part of Rome.

Some other facts confirm that which Plutarch tells us of Crassus. Athenaeus[2] says that it was not rare to find Roman citizens possessed of 20,000 slaves. At the commencement of the civil war between Cæsar and Pompey, the future dictator found opposed to him, in Picenum, Domitius[3] Ahenobarbus at the head of thirty cohorts. Domitius seeing his troops wavering, promised to each of them four jugera out of his own possessions, and a proportionate part to the centurians and veterans. What must have been the fortune of a man who was able to distribute out of his own lands, and surely without bankrupting himself, about 100,000 jugera?

Sec. 10.—The Influence of Slavery.

The last of the evils which we wish to mention as bringing about the deplorable condition of the plebeians at the time of the Gracchi, and which brought more degradation and ruin in its train than all the others, is slavery. Licinius Stolo had attempted in vain to combat it. Twenty-four centuries of fruitless legislation since his death has scarcely yet taught the most enlightened nations that it is a waste of energy to regulate by law the greatest crime against humanity, so long as the conditions which produced it remain the same. The Roman legions, sturdy plebeians, marched on to the conquest of the world. For what? To bring home vast throngs of captives who were destined, as slaves, to eat the bread, to sap

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[1] Plutarch, *Crassus*, c. 1 and 2.

[2] Athenaeus, *Deipnosophistae*, VI, 104.

[3] Cæsar, *Bell. Civ.*, I, 17.

the life blood, of their conquerors. The substitution of slaves for freemen in the labors of the city and country, in the manual arts and industries, grew in proportion to the number of captives sold in the markets of Rome. All the rich men followed more or less the example of Crassus; they had among their slaves, weavers, carvers, embroiderers, painters, architects, physicians, and teachers. Suetonius tells us that Augustus wore no clothing save that manufactured by slaves in his own house. Atticus hired his slaves to the public in the capacity of copyists. Cicero used slaves as amanuenses. The government employed slaves in the subordinate posts in administration; the police, the guard of monuments and arsenals, the manufacture of arms and munitions of war, the building of navies, etc. The priests of the temples and the colleges of pontiffs had their familiae of slaves.

Thus in the city, plebeians found no employment. Competition was impossible between fathers of families and slaves who labored *en masse* in the vast work-shops of their masters, with no return save the scantiest subsistence, no families, no cares, and most of all no army service. In the country it was still worse. It would appear that none but slaves were employed in the cultivation of the land. Doubtless the number of slaves in Italy has been greatly exaggerated, but it is certain that the substitution of slave labor for free, was an old fact when Licinius[1] attempted by the formal disposition of his law to check the evil. In the first centuries of Rome, slaves must have been scarce. They were still dear in the time of Cato, and even Plutarch mentions as a proof of the avarice of the illustrious[2] censor, that he never paid more than 15,000 drachmae for a slave. After the great conquests of the Romans, in Corsica, Sardinia, Spain, Greece, and the Orient, the market went down by reason of the multitude of human

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[1] M. Dureau de la Malle, *Ec. polit. des Romains*, ch. 15, p. 143; ch. 2, p. 231.

[2] Plutarch, *Cato the Censor*, 6 and 7.

beings thrown upon it. An able-bodied, unlettered man could be bought for the price of an ox. Such were the men of Spain, Thrace, and Sardinia. Educated slaves from Greece and the East brought a higher price. We learn from Horace, that his slave Davus whom he has rendered so celebrated, cost him 500 drachmae.[1] Diodorus of Siculus says that the rich caused their slaves to live by their own exertions. According to him the knights employed great bands of slaves in Sicily, both for agricultural purposes and for herding stock, but they furnished them with so little food that they must either starve or live by brigandage. The governors of the island did not dare to punish these slaves for fear of the powerful order which owned them.[2] Slave labor was thus adopted for economic reasons, and, for the same reasons, agriculture in Italy was abandoned for stock raising.

Says Varro:[3] "Fathers of families rather delight in circuses and theatres than in farming and grape culture. Therefore, we pay that wheat necessary for our subsistence be imported from Africa and Sardinia; we pick our grapes in the isles of Cos and Chios. In this land where our fathers who founded Rome instructed their children in agriculture, we see the descendants of those skillful cultivators, by reason of avarice and in contempt of laws, transferring arable lands into pasture fields, perhaps ignorant of the fact that agriculture and fatherland were one."

Fewer men were needed for the care of these pasture lands; but the evil did not stop here. Little by little these pasture lands were transformed into mere pleasure grounds attached to villas. This had already begun to take place as early as the second Punic war, when the plains of Sinuessa[4] and

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[1] Horace, Sat. II, 7; v. 42–43: "Quid? si me stultior ipso quingentis empto drachmis, deprehenderis."

[2] Diodorus, Siculus, Fg. of Bk. XXXIV.

[3] Varro, *De R. R. Proem.* 3, 4.

[4] Livy, XXII, 15.

Falernia were cultivated rather for pleasure than the necessaries of life; so that the army of Fabius could find nothing upon which to sustain itself. Under these influences the plebeians, in 133, had become merely a turbulent, restless mass, but full of the activity and the energy which had characterized them in the early centuries of the republic. They were composed chiefly of the descendants of the ancient plebeian families, decimated by wars and by misery. They were the heirs of those for whom Spurius Cassius, Terentillius Arsa, Virginius, Licinius Stolo, Publilius Philo, and Hortensius had endured so many conflicts and even shed their blood; but they had become brutalized by poverty, debauchery, and crime. No longer able to support themselves by labor, they had become beggars and vagabonds.

Sec. 11.—Lex Sempronia Tiberiana.

In 133, more than two centuries after the enactment of the law of Licinius Stolo, Tiberius Gracchus, tribune of the people for that year, brought forward a bill which was in fact little less than a renewal of the old law. It provided that no one should occupy more than five hundred jugera of the *ager publicus*, with the proviso that any father could reserve[1] 250 jugera for each son.[2] This law differed from that of Licinius in that it guaranteed permanent possession

[1] App., I, 9; Livy, Epit., LVIII, XII: "possessores, qui filios in potestate haberent, supra legitimum modum ducena quinquagena jugera in singulos retinerent."

[2] Mommsen states that this privilege was limited to 1000 jugera in all, and Wordsworth follows him, making the same statement. Lange, *Röm. Alterthümer*, III, 9, agrees with Mommsen and cites, App. B. C., I, 9, 11; Vell., 2, 6; Livy, Ep., 58; Aurelius Victor, 64; Sic. Flacc., p. 136, Lach. I find no direct proof in the places mentioned of what Lange asserts while App. (I, 11), says: "καὶ παισὶ, οἷς εἰσὶ παῖδες ἑκάστῳ καὶ τούτων τὰ ἡμίσεα." Long says there is no proof of any limitation as to number of sons, while Ihne, Duruy and Nitzsch are agreed in following the statement of Appian, as I have here done. See Marquardt u. Momm., *Röm. Alter*, 106.

of this amount to the occupier and his heirs forever.[1] Other clauses were subjoined providing for the payment[2] of some equivalent to the rich for the improvements and the buildings upon the surrendered estates, and ordering the division of the domain thus surrendered among the poorer citizens in lots of 30 jugera each, on the condition that their portions should be inalienable.[3] They bound themselves to use the land for agricultural purposes and to pay a moderate rent to the state. It appears that the Italians were not excluded from the benefit of this law.[4]

The design of this bill was to recruit the ranks of the Romans by drafts of freeholders from among the Latins. Such as had been reduced to poverty were to be restored to independence. Such as had been sunk beneath oppression were to be lifted up to liberty.[5] No more generous scheme had ever been brought before the Romans. None ever met with more determined opposition, and for this there was much reason. There might have been some like the tribune's friends ready to part with the lands bequeathed to them by their fathers; but where one was willing to confess, a hundred stood ready to deny the claim upon them. Nor had they any such demands to meet as those of the olden times. Then the plebeians were a firm and compact body which

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[1] App., I, 11.

[2] Momm., III, 114; Plutarch, *Tiberius Gracchus*, 9, l. 9.

[3] App., I, l. 3.

[4] App., I, 9: "Τιβέριος Γράκχος . . . δημαρχῶν ἐσεμνολόγησε περὶ τοῦ Ἰταλικοῦ γένους ὡς εὐπολεμωτάτου τε καὶ συγγενοῦς, φθειρομένου δὲ κατ' ὀλίγον ἐς ἀπορίαν καὶ ολιγανδρίαν. Also App. B. C., I, 13; Γράκχος δὲ μεγαλαυχούμενος ἐπὶ τῷ νόμῳ . . . οἷα δὴ κτίστης οὐ μιᾶς πόλεως οὐδ' ἑνὸς γένους ἀλλὰ πάντων ὅσα ἐν Ἰταλίᾳ ἔθνη, ἐς τὴν οἰκίαν παρεπέμπετο."

Ihne, IV, 385. Lange says (III, 10): "Das Gracchus die Latiner und Bundesgenosen nicht berücksichtigte, war bei der Gesinnung der römischen Bürgerschaft gegen die Latiner ganz natürlich." I can not see how he harmonizes this statement with that of App., Ἰταλικοῦ γένους and Ἰταλίᾳ ἔθνη. Momm., *Röm. Ge.*, II, 88.

[5] Sallust, *Jugertha*, XLII.

demanded a share of recent conquests that their own blood and courage had gained. Now it was a loose and feeble body of various members waiting for a share in land long since conquered, while their patron rather than their leader exerted himself for them.

Tiberius, like Licinius, met with violent opposition, but he had not like him the patience and the fortitude to wait the slower but safer process of legitimate agitation. He adopted a course[1] which is always dangerous and especially so in great political movements. Satisfied with the justice of his bill and stung by taunts and incensed by opposition, he resolved to carry it by open violation of law. He caused his colleague, Octavius, who had interposed his veto, to be removed from office by a vote of the citizens—a thing unheard of and, according to the Roman constitution, impossible—and in this way his bill for the division of the public land was carried and became a law. It required the appointing of three commissioners to receive and apportion the public domain.[2] This collegium of three persons,[3] who were regarded as ordinary and standing magistrates of the state, and were annually elected by the assembly of the people, was entrusted with the work of resumption and distribution. The important and difficult task of legally settling what was domain land and what was private property was afterward added to these functions. Tiberius himself, his brother Caius, then at Numantia, and his father-in-law, Claudius, were nominated, according to the usual custom of intrusting the execution of a law to its author and his chosen

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[1] App., I, XII; Plutarch, *Tiberius Gracchus*, X–XII; Julii Flori Epitoma, II, (Biblioth. Teubner, p. 67): "Sit ubi intercedentem legibus suis C. Octavium vidit Gracchus, contra fas collegii, juris, potestas, is injecta manu depulit rostris, adeoque praesenti metu mortis exterruit, ut abdicare se magistratu cogeretur."

[2] Momm., III, 115.

[3] App., I, 9; Livy, *Epit.*, LVIII, 12; Plut., *Tib. Gr.*, 8–14; Cic., De Leg. Agr., II, 12, 13; Velleius, 2, 2; Aurelius Vic., De Vir. Illus., 64.

adherents.[1] The distribution was designed to go on continually and to embrace the whole class that should be in need of aid. The new features of this agraria lex of Sempronius, as compared with the Licinio-Sextian, were, first, the clause in favor of the hereditary possessors; secondly, the payment of quit-rent, and inalienable tenure proposed for the new allotments; thirdly, and especially, the permanent executive, the want of which, under the older law, had been the chief reason why it had remained without lasting practical application.[2]

The dissatisfaction of the supporters of the law concurred with the resistance of its opponents in preventing its execution or at least greatly embarrassing the collegium. The senate refused to grant the customary outfit to which the commissioners[3] were entitled. They proceeded without it. Then the landowners denied that they occupied any of the public land, or else asked such enormous indemnities as to render the recovery impossible without violence. This roused opposition. The *ager publicus* had never been surveyed, private boundaries had in many cases been obliterated, and, except where natural boundaries marked the limit of the domain land, it was impossible to ascertain what was *ager publicus* and what *ager privatus*. To avoid this difficulty the commission adopted the just but hazardous expediency of throwing the burden of proof upon the occupier. He was summoned before their tribunal and, unless he could establish his boundaries or prove that the land in question had never been a part of the domain land, it was declared *ager publicus* and confiscated.[4]

On the other hand the newly made proprietors were contending with one another, if not with the commissioners. The

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[1] Plutarch, *Tiberius Gracchus*, 13.

[2] Momm., III, 115. See Ihne's just condemnation of this clause; IV, 387.

[3] Plutarch, *Tib. Grac.*, XIII, ln. 12; Duruy, *Hist. Rom.*, vol. II, pp. 339–420 of Translation.

[4] Long, I, 183; Ihne, IV, 387; Lange, III, 10–12; Nitzsch, *Die Gracchen*, 294 *et seq.*

Italians were, in some cases, despoiled instead of relieved by the law. The complaints of those turned out of their estates to make room for the clamorous swarms from the city, drowned the thanks of such as obtained a portion of the lands. Not even with the wealth of Attalus had Tiberius bought friends enough to aid him at this time.[1] The same spirit of lawlessness which he himself had invoked in the passing of his law, was in turn made use of by his enemies to crush him. Having been absent from Rome while performing his duties as commissioner, he now returned as a candidate for re-election to the tribunate, a thing in itself contrary to law, and in the struggle which arose over his re-election, was slain a little more than six months after his appointment[2] to membership in the collegium.

Uncertainty as to the Details of the Lex Sempronia. We are very imperfectly informed upon many points in Tiberius' agrarian law. In the first place, the question arises, were those persons holding less than 500 jugera at the time of its enactment given their lands as *bona fide* private property with the privilege of making up the deficiency? If not, then the law, instead of punishing, would seem to reward violation of its tenets, and he who had with boldness appropriated the greatest quantity of domain land would now be an object of envy to his more honest but less fortunate neighbors.

Secondly, what arrangement was made as to the buildings and improvements already upon the land? Were these handed over to the new owners without any payment on their part? This would work great inequality in the value of allotments made, and yet we cannot see where the poor man was to obtain the money to pay for these. Then again, what was to become of the numerous slaves which had hitherto carried on the agriculture now destined to be performed by

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[1] Plutarch, *Tib. Grac.*, 14; Florus, II.

[2] Cicero, *De Amicitia*, 12. "Tiberius Gracchus regnum occupare conatus est vel regnavit is quidem paucas menses."

small holders? Their masters would have no further use for them and would consequently swell the lists of freedmen in order to avoid the expense of feeding them. This law was passed in the midst of the Sicilian slave war and Tiberius Gracchus would surely not have neglected to make some provision to meet this exigency. The law as it stands in its imperfect condition seems to be the work of an ignorant, unprincipled political charlatan, but we are convinced Tiberius was not that. Moreover, we know that he had the help of one of Rome's most able lawyers, Publius Mucius Scaevola, and the advice of his father-in-law, Appius Claudius, who was something of a statesman. We are therefore convinced that some conditions which were to meet these obstacles were enacted. We must admit, however, that it is a little surprising that no fragment of such conditions has ever reached us in the literature of Rome.

Results of this Law. Although Tiberius was dead, yet his law still lived, and, indeed, received added force from the death of its author. The senate killed Gracchus but could not annul his law. The party which was favorable to the distribution of the domain land gained control of affairs. Gaius Gracchus, Marcus Fulvius Flaccus, and Gaius Papirius Carbo, were the chief persons in carrying the law into effect. Mommsen (vol. III, p. 128) says: "The work of resuming and distributing the occupied domain land was prosecuted with zeal and energy; and, in fact, proofs to that effect are not wanting. As early as 622 the consul of that year, Publius Popillius, the same who presided over the prosecution of the adherents of Tiberius Gracchus, recorded on a public monument that he was 'the first who had turned the shepherd out of the domains and installed farmers in their stead;' and tradition otherwise affirms that the distribution extended over all Italy, and that in the formerly existing communities the number of farmers was everywhere augmented—for it was the design of the Sempronian agrarian law to elevate the former class, not by the founding of new

communities, but by the strengthening of those already in existence.

"The extent and the comprehensive effect of these distributions are attested by the numerous arrangements in the Roman art of land-measuring referable to the Gracchan assignations of land; for instance, the due placing of boundary stones, so as to obviate future mistakes, appears to have been first suggested by the Gracchan courts for defining boundaries and by the distribution of land.

"But the number on the burgess-rolls gives the clearest evidence. The census, which was published in 623, and actually took place probably in the beginning of 622, yielded not more than 319,000 burgesses capable of bearing arms, whereas six years afterwards (629), in place of the previous falling off (p. 108), the number rises to 395,000, that is 76,000 of an increase beyond all doubt solely in consequence of what the allotment commission did for Roman burgesses."

Ihne says, concerning this same commission (vol. IV, p. 409): "The triumvirs entered upon their duties under the most unfavorable circumstances. . . . We may entertain serious doubts whether they or their immediate successors ever got beyond this first stage of their labors, and whether they really accomplished the task of setting up any considerable number of independent freeholders." Ihne further says (vol. IV, p. 408, n. 1), in answer to the statements made by Mommsen, which we have quoted above: "There is an obvious fallacy in this argument, for how could the assignment of allotments to poor citizens increase the number of citizens? There is nothing to justify the assumption that non-citizens were to share in the benefit of the land-law, and that by receiving allotments they were to be advanced to the rank of citizens. If the statements respecting the census of 131 B. C. and 125 B. C. are to be trusted, the great increase in the number of citizens must be explained in another way. It is possible . . . that after the revolt of Fregellae (125 B. C.) a portion of the allies were admitted to the Roman franchise by several

plebiscites. We know nothing of such plebiscites; but it is not unlikely that the Roman senate in 125 B. C. acted on the principle of making timely concessions to a portion of the rebels, and thus preventing unanimous action among them. This is what was done in 90 B. C. during the great Social War. By such an admission of allies, the increase of citizens between 131 and 125 might possibly be explained."

If we examine the objections which Ihne raises we shall not find them so formidable as first appears. Mommsen does not say that the number of citizens was increased. What he does say is that the number of burgesses capable of bearing arms was increased (vol. III, p. 128). In 570–184, the Servian Military Constitution was so modified as to admit to service in the burgess army, persons possessed of but 4,000 asses ($85). In case of need all those who were bound to serve in the fleet, *i. e.* those rated between 4,000 and 1,500 asses and all freedmen, together with the free-born rated between 1,500 asses ($30) and 375 asses ($7.50), were enrolled in the burgess infantry.[1] It is easy enough to see that the gift on the part of the government of 30 jugera (24 acres) of land to each poor citizen, would raise him from the ranks of the proletariate and make him liable to military service.

This is sufficient to establish Mommsen's thesis;[2] and it is not necessary to consider the second point, viz., that non-citizens were not to share in the benefit of the land law nor thereby to be raised to the rank of citizens, although to us it would be no more difficult to believe this than that 76,000 allies had been admitted to the Roman franchise "by several plebiscites" no trace or rumor of which had been preserved.

It can hardly be supposed that the Italian farmers were multiplied at the same ratio as were the Romans; but the result must have been most beneficial even to them.

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[1] Momm., II, p. 417.

[2] Professor Long thinks that the law of Tiberius soon became a dead letter. Lange (*Röm. Alter.*, III, 26–29), inclines to this view. Duruy (II, 419–420), and most other modern writers agree with Mommsen.

In the accomplishing of this result, respectable interests and existing rights were no doubt violated. The commission itself was composed of violent partisans who, being judges unto themselves, did not scruple to carry out their plans even at the cost of recklessness and tumult. Loud complaints were made, but usually to no avail. If the domain question was to be settled at all, the matter could not be carried through without some such rigor of action. Intelligent Romans wished to see the plan thoroughly tested. But this acquiescence had a limit. The Italian domain was not all in the hands of Roman citizens. Allied communities held the usufruct of large tracts of it by means of decrees of the people or the senate, and other portions had been taken possession of by Latin burgesses. These in turn were attacked by the commissioners; but to give fresh offense to these Latini, who were already overburdened with military service, without share in the spoils, was a matter of doubtful policy.

The Latini appealed to Scipio in person, and by his influence a bill was passed by the people which withdrew from the commission its jurisdiction and remitted to the consuls the decision as to what were private and what domain lands. This was a mild way of killing the law, and resulted in that. It had, however, in great measure, fulfilled its object and left little territory in the hands of the Roman state.

Sec. 12.—Lex Sempronia Gaiana.

Gaius Gracchus really enacted no new agrarian law but merely re-established the power of the commission which had been appointed by his brother ten years before; which power they had lost by the law of Scipio.[1] Gaius' law was enacted merely to preserve the principle, and the distribution of land,

[1] Scipio must have caused a plebiscitum to be enacted, for the repeal of this clause, as an existing law could not be repealed by a *senatus consultum*. See Ihne, IV, 414, note.

if resumed at all, was on a very limited scale. This is made known from the fact that the burgess-roll showed precisely the same number capable of bearing arms in 124 and 114. As has already been stated, the domain land had been exhausted by the commission before losing its power, and, therefore, Gaius had none to distribute.[1] The land held by the Latini could only be taken into consideration with the difficult question of the Roman franchise. But when Gaius proposed the establishment of colonies in Italy, at Tarentum and Capua, whose territories had been hitherto reserved as a source of revenue to the treasury,[2] he went a step beyond his brother and made this also liable to be parcelled out; not, however, according to the method of Tiberius, who did not contemplate the establishment of new communities, but according to the colonial system. There can be little doubt that Gaius designed to aid in permanently establishing[3] the revolution by means of these new colonies in the most fertile part of all Italy. His overthrow and death put a stop to the establishment of the contemplated colonies and left this territory still tributary to the treasury.

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[1] Momm., III, 137.

[2] Cicero, *De Leg. Agr.*, II, c. 29–32; Marquardt u. Momm., *Röm. Alter.*, IV, 106: "ager publicus mit Ausnahme einiger dem Staate unentbehrlicher Domainen, wozu namentlich das Gebiet von Capua und das stellatische Feld bei Cales gehörte."

[3] Ihne, IV, 438–479. Plutarch, *Gaius Gracchus*, 13.

CHAPTER III.

Sec. 13.—Lex Thoria.[1]

According to Appian, during the years which followed the death of Gaius Gracchus up to the tribunate of Saturninus, that is to say, between the years 120 and 100, three agrarian laws were proposed and adopted.

1. A law "That the holders of the land which was the matter in dispute might legally sell[2] it." Appian, who is the only authority for this period, does not give the date of the law nor the name of the tribune who proposed it, but Ihne[3] makes the date 118, and Mommsen assigns the law to Marcus[4] Drusus. This law was a repeal of all the restrictions which the Gracchi had placed upon assignments of public land. The object of this clause was to secure the success of their great reforms, and to establish a number of small proprietors who would cultivate their little farms, and breed citizens and soldiers. But forced cultivation is impossible, and sumptuary laws have never yet succeeded in increasing[5] population. Again it is inconsistent to give land to a man and deprive him of the power of sale, for this is an essential part of that domain which we call property in land. If a man wishes to sell, he

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[1] Rudorff, *Ackergesetz des Spurius Thorius*, Zeitschrift für geschichtliche Rechtswissenschaft, Band X, s. 1–158. Corpus Inscriptionum Latinarum, vol. V, pp. 75–86. Wordsworth, *Specimens and Fragments of Early Latin*, 440–459.

[2] Appian, *Bell. Civ.*, I, c. 27.

[3] Ihne, *Roman History*, V, 9.

[4] Momm., *Rom. Hist.*, III, 165.

[5] Long, *Decline of the Rom. Rep.*, I, 352. See Lange, *Röm. Alter.*, III, 48.

will always have sufficient reasons for so doing, and a rich man can afford to pay[1] the highest price, freedom of exchange thus bringing ultimate good to both parties. It is easy to comprehend the consequences of this law. It was the commencement of a reaction entirely aristocratic in its nature.[2] It was skillfully conducted with the ordinary spirit of the Roman senate, the ruses, mental reservations, and dissimulations under guise of public interest. The aristocracy presented to the plebeian farmers, established by the lex Sempronia, a means of promptly and easily satisfying their passions. They had never earned their little farms, nor did they appreciate the independence of the tiller of the soil. Unaccustomed to farm labor,[3] and the plodding unexciting life of the Roman *agricola*, they made haste to abandon a toilsome husbandry, the results of which seemed to them slow and uncertain, and with the pieces of silver which they received as the price of their lands, returned to Rome to swell the idle and vicious throng[4] which enjoyed the sweet privilege of an existence sustained without labor.

Thus the nobles re-entered promptly and cheaply into the possession of the lands of which Tiberius had but a short time before deprived them, and, by means of a little sacrifice, substantially and legally converted their possessions into real property, while the plebeians whom Tiberius had wished to elevate by means of forcing[5] upon them the necessity of labor, fell back into their accustomed poverty and brutality. But the object for which the nobles were striving was not yet completely gained. The present victory was theirs; they now strove to guarantee the future, and so render impossible dangers similar to those already passed through.

2. A second law was thus enacted: "Spurius Borius, a tribune, proposed a law to this effect; that there should be

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[1] Long, *loc. cit.* [2] Momm., III, 161; Ihne, V, 10.
[3] Long, *loc. cit.* [4] Lange, III, 48–49; Marquardt u. Momm., IV, 108.
[5] Long, *loc. cit.* Momm., III, 167–168; Ihne, V, 8–10.

no more distribution of the public land, but it should be left to the possessors who should pay certain charges (*vectigalia*) for it to the state (*δήμῳ*) and that the money arising from these payments should be distributed."[1]

It is easy to comprehend the effect of a law so conceived. On the one hand it guaranteed to the possessors full property in the public lands which they held. From this point of view it was aristocratic. But on the other hand it aimed to unite the interests of the common people with those of the aristocracy, by placing a tax of one tenth of the produce upon the holders of these lands,[2] thus reëstablishing the law which had been annulled by Drusus. This took the place of distributions of land, which had now been made impossible[3] in Italy. In reality this law was disastrous to the plebeians as it established a tax[4] for their benefit, a *congiarium*, and placed a premium upon laziness.

The narration of Appian presents some grave difficulties. In all the manuscripts of Appian the name of the tribune proposing the second law is Spurius Borius.[5] Cicero mentions a tribune by the name of Spurius[6] Thorius and Schweighäuser in his edition of Appian has changed 'Borius' to 'Thorius.' But this does not lessen the difficulty, as the law which Cicero attributes to Thorius is entirely different from the second law of Appian which, according to him was introduced by Spurius Borius. Cicero says that Spurius Thorius "freed the public lands from the vectigal."[7] Appian says that Spurius Borius guaranteed the *possessions* in the public lands, levying a tax on them for the benefit of the people. It is a sheer waste of time to attempt to harmonize these two statements.[8] Granting that Spurius Borius and

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[1] Appian, I, c. 27.
[2] Long, I, 353.
[3] Long, I, 354.
[4] Ihne, V, 10-11.
[5] Long, I, 353; Wordsworth, 440; Momm., III, 165, note; Ihne, V, 9; Lange, III, 48; Appian, I, c. 27.
[6] Cicero, *Brut.*, 36.
[7] Cicero, *De Orat.*, II, 70.
[8] Marquardt u. Momm., *Röm. Alter.*, IV, 108, n. 4; Wordsworth, 441.

Spurius Thorius are one and the same person, the statements still remain diametrically opposed according to a simple and commonly accepted translation of Cicero's words: "Sp. Thorius satis valuit in populari genere dicendi, is qui agrum publicum vitiosa et inutile lege vectigali levavit." Mommsen makes Cicero agree with Appian by changing "vectigali" into the instrument, and rendering[1] "relieved the public land from a vicious and useless law by imposing a vectigal." No other writer agrees with Mommsen in making such a translation.

3. The third law is mentioned by Appian alone who says: "Now when the law of Gracchus had once been evaded by these tricks, an excellent law and most useful to the state if it could have been executed, another tribune not long after (*οὐπολὺ ὕστερον*) abolished even the vectigalia."[2] This is evidently the same law which Cicero mentions as that of Spurius Thorius and as he also mentions him in another place (*De Or.*, II, 70, 284), we may possibly accept him as the author.

There are still extant some fragments of a bronze tablet which contains upon its smooth surface the Lex Repetundarum and has cut upon its rough[3] back an agrarian law. These fragments were discovered in the 16th century among the collections in the Museum of Cardinal[4] Bembo at Padua. Sigonius attempted the reconstruction of this law and after him Haubold and Klentze, but Rudorff has completed the reconstruction as far as possible and made the law the subject of an interesting essay.[5] Mommsen has a commentary in the Corpus Inscriptionum Latinarum[6] upon this law. From all these sources the date of this law has been established almost beyond doubt as 111. Sigonius assigned it

[1] Corpus Inscriptionum Latinarum, vol. I, p. 74.
[2] Appian, I, c. 27.
[3] Long, I, 355; Wordsworth, 440.
[4] Long, I, 355; Wordsworth, 440; See Rudorff, Ack. des Sp. Thor.
[5] Zeitschrift für geschichtliche Rechtswissenschaft, Band X, s. 1–194.
[6] C. I. L., I, pp. 75–86.

to Spurius Thorius, and, as the name is immaterial and[1] his arguments moreover for this title are not easily set aside, we can do no better than adopt it.

Argument of the Lex Thoria.[2]

The law evidently consists of three parts, although the rubricae are absent.

I. De agro publico p. R. in Italia (1–43).
II. De agro publico p. R. in Africa (44–95).
III. De agro publico p. R. qui Corinthorum fuit (96–105).

I. On the Ager Publicus in Italy.

This part may be divided roughly into three sections: (1) Lines 1–24, defining *ager privatus;* (2) 24–32, defining *ager publicus;* (3) 33–43, on disputed cases.

It thus embraces the first forty-three lines of the law, and is concerned with the public land of Italy, from the Rubicon southwards. It commences by referring to the condition of this land in the year 133, when Tiberius Gracchus was tribune. The law does not affect to touch any thing which had been enacted concerning this land prior to 133. It either confirms or alters what had been done in 133, and since that time. All the public land which was exempted from the operation of the Sempronian laws, *i. e., Ager Campanus* and *Ager Stellatis*, was also excluded from the operation of the *lex Thoria.*

(1) The first ten lines of the law relate to that part of the ager publicus which was occupied before the time of the Gracchi, if the amount of such land did not exceed the maximum fixed by the Sempronian laws;

(2) Also, to the assignments made by lot (*sortito*) to Roman citizens by the commissioners since the enactment of the Sem-

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[1] Long, I, 356.

[2] Wordsworth, 447. See the text of this law in C. I. L., vol. I, pp. 79–80.

pronian laws, if such assignments were not made out of land which had been guaranteed to the old possessors;

(3) Also, to all lands taken from an old possessor, but on his complaint restored to him by the commissioners;

(4) Also, to all houses and lands, in Rome or in other parts of Italy, which the commissioners had granted without lot, so as such grants did not interfere with the guaranteed title of older possessors;

(5) Also, to all the public land which Gaius Sempronius, or the commissioners, in carrying out his law, had used in the establishment of colonies or given to settlers, whether Roman citizens, Latini, or Italian Socii, or which they had caused to be entered on the "*formae*" or "*tabulae.*"

All the lands comprised in the above are declared in lines seven and eight to be private property, in these words: "Ager locus omnis quei supra scriptus est, extra eum agrum locum, quei ager locus ex lege plebeivescito, quod C. Sempronius Ti. f. tr. pl. rogavit, exsceptum cavitumve est nei divideretur . . . . privatus esto."

Lines 8–10 declare that the censors shall, from time to time, enter this land upon their books like any other private property; and it is further declared that nothing shall be said or done in the senate to disturb the peaceful enjoyment of this land by those persons possessing it.

Of lines 11–13 (ch. II) nothing definite can be said, because of the few words which have been preserved.[1] Rudorff explains them as referring to land granted to *viasii vicani* (dwellers in villages along the roads), by the Sempronian commissioners; such lands to remain in their possession, but to be theoretically *ager publicus.*

Lines 13–14 refer to lands occupied since 133 *agri colendi causa.* They allow to every Roman citizen the privilege of occupying, for the purpose of cultivation, thirty jugera of public land; they further declare that he who shall possess or

[1] Long, I, 359.

have not more than thirty jugera of such land, shall possess and have it as private property,[1] with the provision that land so occupied shall be no part of the public land excepted from appropriation, and further, that such occupation shall not interfere with the guaranteed lands of a previous possessor.

Lines 14–15 relate to holders of pasture land (*ager compascuus*). This *ager compascuus* was land which had been left undivided, and had not become the private property of any individual, but was the common property of the owners of the adjacent lands. These persons had the right to pasture stock upon this land by paying pasture dues (*scriptura* or *vectigal*) to the state. The *Thoria lex* freed these lands from the *vectigal* or *scriptura*, and granted free pasturage to each man for ten head of large beasts—cattle, asses, and horses—and fifty head of smaller animals—sheep, goats, and swine. This common pasture must be carefully distinguished from the communal property which was granted to the settlers in a Colonia and called "*compascua publica*" with the additional title[2] of the colony, as "*Julienses.*"

These rights of common resemble, in some respects, the English common of pasture as described by Bracton.[3] By English customary law, every freeholder holding land within a manor, had the right of common of pasturage on the lord's wastes as an incident to his land.

Lines 15–16. The possession of land, granted by the commissioners in a colony since 133, to be confirmed before the Ides of March next.

Lines 16–17. The same rule applied to lands granted otherwise by the same commissioners.

Line 18. Such occupants if forcibly ejected to be restored.

Lines 19–20. Land assigned by the Sempronian com-

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[1] "Quom quis ceivis Romanus agri colendi causa in eum agrum agri jugera non amplius xxx possidebit habebitue, is ager privatus esto."

[2] Long, *loc. cit.;* Wordsworth, 446.

[3] Digby, *History of the Law of Real Property in England,* p. 157.

mission, in compensation for land in a colony which had been made public, to become private.

Lines 23–24. Confirmation of the title or restitution of such land to be made before the Ides of March next.

Lines 24–25. Land besides this which remains public is not to be occupied, but to be left free to the public for grazing. A fine for occupation is imposed. The law allowed all persons to feed their beasts great and small on this public pasture, up to the number mentioned in lines 14–15 as the limit to be pastured on the *ager campascuus*, free of all tax. This, according to Rudorff, was done for the benefit of the small holders. Those who sent more than this number of animals to the public pastures must pay a *scriptura*, for each head.

Line 26. While the cattle or sheep were driven along the '*calles*,' or beast-tracks, and along the public roads to the pasture grounds, no charge was made for what they consumed along the road.

Line 27. Land given in compensation out of public land, to be *privatus utei quoi optuma lege*.

Line 27. Land taken in this way from private ownership to be *publicus*, as in 133.

Lines 27–28. Land given in compensation for *ager patritus* to be itself *patritus*.

Line 28. Public roads to remain as before.

Line 29. Whatever Latins and *peregrini* might do in 112, and whatever is not forbidden citizens to do by this law, they may do henceforward.

Lines 29–30. Trial of a Latin to be the same as for a Roman citizen.

Lines 31–32. Territory (1) of borough towns or colonies (2), in trientabulis, to be, as before, public.

Lines 33–34. Cases of dispute about land made private between 133 and 111, or by this law, to be judged by the consul or praetor before next Ides of March.

Lines 35–36. Cases of dispute after this date to be tried by consuls, praetors, or censors.

Lines 36–39. Judgment on money owing to publicani to be given by consuls, proconsuls, praetors or propraetors.

Line 40. No one to be prejudiced by refusing to swear to laws contrary to this law.

Lines 41–42. No one to be prejudiced by refusing to obey laws contrary to this law.

Lines 43–44. On the colony of Sipontum (?).

Thus we see that the *lex Thoria* had two main objects in view: (1) The guaranteeing to possessors full property in the land which they occupied. (2) The freeing from *vectigal* or *scriptura* the property of every one.

In this way was the reaction of the aristocracy completed. It left nothing of the Sempronian law. Appian[1] has fully comprehended all this, and, in his enumeration of the three laws, connection between which he indicates, we see clearly the entire revolutionary system, conducted, we must admit, with a rare address and a perfidy which rendered the effect certain. The aristocracy did not rest. As soon as they had gained the people by their new bait of money and food, soothed them by their apparent generosity, and familiarized them with the idea that the *possessions* of the nobles were not only legally acquired but inviolable, then they raised the mask, and by a bold step swept away the *vectigal*,[2] thus leaving their property free. The enactment of this law virtually closed the long struggle between patrician and plebeian over the public lands of Rome, and left them as full property in the hands of the rich nobility. The results could hardly have been otherwise. Sumptuary laws, false economic principles, had closed all channels[3] of trade and manufacture to the nobility, while conquest had filled their hands with gold and placed at their disposal vast numbers[4] of slaves. There was but one channel open for the investment of this gold,—the agrarian.[5] Farming and cattle-raising were the only occupations in which

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[1] Long, I, 357. [2] Appian, I, c. 27. [3] Long, *loc. cit.*; Ihne, *loc. cit.*
[4] Ihne, *loc. cit.*; Long, *loc. cit.* [5] Momm., *loc. cit.*

slaves could be used with advantage and so, as a natural result of Roman economics, the plebeian, with little or no money and subject to the military call, was compelled to enter into a one-sided contest with capital and slave labor. So long as these conditions existed so long would all the laws of the world fail to save him from abject poverty and its attendant evils.

Sec. 14.—Agrarian Movements between 111 and 86.

In the year following the enactment of the *lex Thoria*, or, by some other authorities, in 105, an agrarian law was proposed by a tribune named Marcus Philippus. Cicero is the only writer who mentions it, and he has given us no information concerning its tendency and dispositions. We only know from him that it was rejected.[1] Probably the whole thing was merely a political ruse in order to gain an election or to be handsomely bought off by the nobility. It, however, presents one point of interest to us. The introduction of the bill was preceded by a speech, in which the tribune, in justifying his undertaking, affirmed that there were not two thousand citizens who had wealth. Cicero has made no attempt to refute this, and must, therefore, have judged it true. It reveals the fact that Rome was in a deplorable condition.

In chronological order the first agrarian law after the vain attempt of Philippus was that of Lucius Appuleius Saturninus. In the year 100, he brought forward a bill for the distribution of land in Africa[2] to the soldiers of Marius. Each soldier was to receive one hundred jugera of land. No distinction was to be made between Roman and Latin. This

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[1] Cic., *De Off.*, II, 21.

[2] Lucius Appuleius Saturninus, tribunus plebis seditiosus ut gratiam Marianorum militum pararet, legem tulit ut veteranis centena agri jugera in Africa dividerentur . . . . Siciliam, Achaiam, Macedoniam novis colonis destinavit; et aurum, dolo an scelere, Caepionis partum, ad emtionem agrorum convertit. Aurel. Victor. De Vir. Illus., 73.

bill received the sanction of the assembly and became a law, but force was the chief instrumentality in bringing this about. This law, so far as can be ascertained, was never enforced, so that when the same man, three years later, brought forward another agrarian bill, he took the precaution to add a clause binding every senator, under heavy penalty, to confirm the law by the most solemn oath.[1] The first law was enacted in order to provide the soldiers of Marius with suitable farms when they returned from the campaign in Numidia. The author doubtless acted with the aid and hearty coöperation of Marius. When Saturninus brought forward his second bill, Marius[2] had returned from the north as the hero of Aquae Sextiae and was present to help. The nobility as one man opposed the scheme; the town-people were the clients of the rich. If Marius[3] and Saturninus were to succeed, it must be by the aid of the country burgess and the soldier. With the legions that fought at Vercellae drawn up in the town, amid riot and bloodshed, the assembly passed the bill. The senate, together with Marius himself, for a time demurred from taking the oath. Finally,[4] at the instigation of "the man from the ranks," who had come to the conclusion that it was best to subscribe, all save one, Metellus, took the oath. The law enacted that assignments of land in the country of the Gauls, in Sicily, Achaia, and Macedonia, should be made; that colonies should be established, and that Marius should be the head of the commission entrusted with the establishment of all these settlements.[5] These colonies were to consist of Roman citizens; and, in order that Latini,[6] their companions in arms, might participate in the grants, Marius was invested with power to bestow the franchise upon a certain number of these. But no one of these colonies was ever founded. The only

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[1] App., I, 29; Plutarch, *Marius*, 29.
[2] Plutarch, *Marius, loc. cit.*
[3] App., *Bell. Civ.*, I, 30–33.
[4] App., *loc. cit.*
[5] Aurelius Victor, 73.
[6] Cicero, *De Orat.*, II, c. 7, 1; *pro Balbo*, XIV; *pro Rabirio*, XI.

colony of the year 100 was Eporedia[1] (Ivrea), in the northwestern Alps, and it is not likely that this was established in accordance with the provisions of the enactment. The law was to take effect in 99, and a change of party took place before that time which sent Marius into practical banishment and rewarded his partisan, Saturninus, with death. The optimates who were now in office paid no attention to the law, and the senators forgot their oath. Another injury is added to the many which the Latini had suffered.

In the year 99, *i. e.*, in the year following the death of Saturninus, an agrarian law was proposed by the tribune Titius, but we know nothing of its conditions. Cicero is the only writer who mentions it and even his text is doubtful.[2] According to one of his statements Titius was banished because he had preserved a portrait of Saturninus, and the knights deemed him for this reason a seditious citizen. Valerius Maximus, who without doubt borrowed his facts from Cicero, states that "Titius had rendered himself dear to the people by having[3] brought forward an agrarian law." Cicero mentions in another place, the *lex Titia*[4] upon the same page as the *lex Saturnina* and implies that it had been enacted. If so it was disregarded and thus rendered void.

In 91 an agrarian law was proposed by Livius Drusus, the son of the adversary of Gaius Gracchus, and, with his new judiciary, the measure was carried and became a law.[5] The Italians were embraced in this law and were to have equal rights with Roman citizens, but Drusus died before he had time to carry his law into execution, and his law died with him.

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[1] Long, I.

[2] Cicero, *Pro Rabirio*, 9.

[3] Val. Max., VIII, 1, § 2: "Sext. Titius . . . agraria lege lata gratiosus apud populum."

[4] *De Legibus*, II, 6. *De Orat.*, II, 11.

[5] Ihne, V, 176–186; App., I, 35; Val. Max., IX, 5, 2: Cicero, *De Orat.*, III, 1; Livy, *Epit.*, 71.

Sec. 15.—Effect of the Sullan Revolution.

As soon as Sulla found himself established, he caused a bill to pass the Comitia Centuriata by means of which he was empowered to inflict punishment upon certain Italian communities. For the accomplishment of this purpose commissioners were appointed to coöperate with the garrisons established throughout all Italy. The less guilty were required to pay fines, pull down their walls, and raze their citadels.[1] Those that had been guilty of continued opposition, as Samnium, Lucania, and Etruria, had their territory in whole or in part confiscated, their municipal rights cancelled, immunities taken from them, which had been granted by old treaties, and the Roman franchise,[2] which they had been granted by the Cinnan government, annulled. Such persons received, instead, the lowest Latin rights which did not even imply membership in any community and rendered them destitute of civic constitution and the right of making a testament.[3] This latter treatment applied only to those whose land was confiscated. Thus Sulla vindicated the majesty of the Republic and at the time avoided furnishing his enemies with a nucleus in Italian communities. In Campania, the democratic colony established at Capua by Cinna[4] was done away with and the domain given back to the state, thus becoming *ager publicus.* The whole territory of Praeneste and Norba in Latium, and Spoletium in Umbria was confiscated. The town of Sulmo in Pelignium was razed. But more direful than all this was the punishment which fell upon Etruria[5] and Samnium. These people had marched upon Rome and, with the avowed determination of

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[1] App., *Bell. Civ.*, I, 94–100; Livy, *Epit.*, 89. Plutarch, *Life of Sulla.*
[2] Ihne, V, 391.
[3] Momm., III, 428, note. See article on Sulla, in Brittannica.
[4] Momm., III, 401.
[5] Momm., III, 429; Ihne, V, 392; Long.

exterminating the Roman people, had engaged in battle at the Colline gate. They were utterly destroyed and their country left desolate. The territory of Samnium was not even opened up for settlement, but left as a lair for wild beasts. Henceforth from the Rubicon to the Straits of Sicily there were to be none but Romans; the laws and the language of the whole peninsula were to be the laws[1] and the language of Rome.

To accomplish such an object as this, it was not enough to destroy and make desolate, it became necessary to repopulate the waste places and rebuild that which had been torn down. Roman citizens had to be sent as colonists into the desolate regions. Sulla, accordingly, undertook to carry out his plans of colonization, the grandest and most comprehensive which Rome had ever seen, and which indeed have had no parallel in history till the settlement of the north of Ireland by Cromwell and William III. The arrangements as to the property of the Italian soil placed at the disposal of Sulla[2] all the Roman domain lands which had been placed in usufruct to the allied communities, and which now reverted to the Roman government. It also placed at his disposal all the confiscated territories of the communities incurring punishment. Upon these territories he established military colonies, and thus obtained a three-fold result.[3] He remunerated his soldiers for the faithful service rendered him in long years of toil and danger. He repeopled the regions desolated by war (except Samnium). He provided a military protection for himself and the new constitution which he established.

Most of his new settlements were directed to Etruria, Faesulae and Arretium being among the number; others, to Latium[4] and Campania, where Praeneste and Pompeii became Sullan

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[1] Momm., III, 429.

[2] Momm., *loc. cit.*; Ihne, V, 391–395.

[3] Momm., III, 429.

[4] Momm., III, 430; Marquardt u. Momm., *Röm. Alter.*, IV, 111, totam Italiam suis praesidiis obsidere atque ocupare; Cicero, *De Leg. Agr.*, 2, 28, 75.

colonies. A great part of these colonies were, after the Gracchan manner, merely grafted upon town-communities already existing. The comprehensiveness of these settlements may be seen in this fact that 20,000 allotments were [1] made in different parts of Italy. Notwithstanding this vast disposal of territory, Sulla gave lands to the temple of Diana at Mt. Tifata, while the territory of Volaterrae and Arretium remained undisturbed. He also revived the old plan of occupation which had been legally forbidden in the year 118. Many of Sulla's intimate friends availed themselves of this method of becoming masters of large estates.

Sec. 16.—Agrarian Movements between 86 and 59.

The first agrarian movement after the Sullan Revolution was that inaugurated by the tribune Rullus. This has become the most famous of all the agrarian laws because of the speeches made against it by the great adversary of Rullus, Cicero, who succeeded in defeating the measure by reason of his brilliant rhetoric. Plutarch [2] has thus analyzed this proposition. "The tribunes of the people proposed dangerous innovations; they demanded the establishment of ten magistrates with absolute power, who, while disposing, as masters, of Italy, Syria, and the new conquests of Pompey, should have the right to sell the public lands; to prosecute those whom they wished; to banish; to establish colonies; to draw upon the public treasury for whatever money they had need; to levy and maintain what troops they deemed necessary. The concession of so widely extended power gained for the support of the law the most powerful men in Rome. The colleague of Cicero, Antonius, was one of the

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[1] App., I, 100; Cicero, *De Legibus Agrariis*, II, 28, 78; Ihne, V, 394; Marquardt u. Momm., IV, 111; Zumpt, *Comm. Epigr.*, 242–246; Cicero, *Ad Att.*, I, 19, 4: "Volaterranos et Arretinos, quorum agrum Sulla publicarat."

[2] Plutarch, *Cicero*, 16–17.

first to favor it, in the hope of being one of the decemvirs. Cicero opposed the new law in the senate and his eloquence so completely overpowered even the tribunes that they had not one word to reply. But they returned to the charge and having gained the support of the people, they brought the matter before the tribes. Cicero was in no way alarmed; he left the senate, appeared on the rostrum before the people and spoke with so great force that he not only caused the law to be rejected but took from the tribunes all hope of being successful in similar enterprises."

In 61 we find Cicero advocating a bill similar in nature to the one he had so brilliantly combatted in 64. In the last instance, however, the law was proposed by Pompey, and in favor of Pompey's soldiers and that made all difference to a man who ever curried favor with the great. Flavius, who proposed this law, was but the creature of Pompey. Cicero has made known to us, in one of his letters to Atticus, the conditions of the law which Flavius proposed and the modifications which he himself wished to apply to it. Flavius proposed to distribute lands both to the soldiers of Pompey and the people; to establish colonies; to use for the purchase of the lands for colonization, the subsidies which should accrue in five years, from the recently conquered territories.[1] The senate rejected this law entirely, in the same spirit of opposition which it had shown to all agrarian laws, probably thinking that Pompey would thereby obtain too great an increase of power.[2] This was the last attempt at agrarian legislation until the year 59, when Julius Cæsar enacted his famous law.

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[1] Cicero, *Ad. Att.*, I, 19.

[2] Ibid.: "Huic toti rationi agrariae senatus adversabatur, suspicans Pompeio novam quamdam potentiam quaeri."

Sec. 17.—Lex Julia Agraria.

During the first consulship of Caius Julius Cæsar, he brought forward an agrarian[1] bill at the instigation of his confederates. The main object of this bill was to furnish land to the Asiatic army[2] of Pompey. In fine, this bill was little more than a renewal of a bill presented by Pompey the previous year (58), but rejected. Appian gives the following account of this bill: "As soon as Cæsar and Bibulus[3] (his colleague) entered on the consulship, they began to quarrel and to make preparation to support their parties by force. But Cæsar who possessed great powers of dissimulation, addressed Bibulus in the senate and urged him to unanimity on the ground that their disputes would damage the public interests. Having in this way obtained credit for peaceable intentions, he threw Bibulus off his guard, who had no suspicion of what was going on, while Cæsar, meanwhile, was marshalling a strong force, and introducing into the senate laws for favoring the poor, under which he proposed to distribute land among them and the best land in Italy, that about[4] Capua which at the present time was let on public account.[5] He proposed to distribute this land among heads of families who had three children, by which measure he could gain the good will of a large multitude, for the number of those who had three children was 20,000. This proposal met with opposition from many of the senators, and Cæsar, pretending to be much vexed at their unfair behavior, left the house and never called the senate together again during the

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[1] Livy, *Epit.*, 103.

[2] Momm., IV, 244.

[3] App., *Bell. Civ.*, II, c. 10.

[4] Compare Dio Cassius, Bk., XXXVIII, c. 1: "Τὴν δὲ χώραν τὴν δὲ κοινὴν ἅπασαν πλὴν τῆς Καμπανίδος ἔνεμε, ταύτην γὰρ ἐν τῷ δημοσίῳ ἐζαίρετον διὰ τὴν ἀρέτην συνεβούλευσεν εἶναι."

[5] Compare Suetonius' *Cæsar*, c. 20: "Campum Stellatem, majoribus consecratum, agrumque Campanum, ad subsidea reipublicae vectigalem relictum."

remainder of his consulship, but addressed the people from the rostra. He, in the presence of the assembly, asked the opinion of Pompeius and Crassus, both of them approving, and the people came to vote on them (the bills), with concealed daggers. Now as the senate[1] was not convened, for one consul could not summon the senate without the consent of the other consul, the senators used to meet at the house of Bibulus, but they could make no real opposition to Cæsar's power. . . . Now Cæsar secured the enactment of the laws, and bound the people by an oath to the perpetual observance of them, and he required the same oath from the senate. As many of the senators opposed him, and among them Cato, Cæsar proposed death as a penalty for not taking the oath and the assembly ratified this proposal. Upon this all took the oath immediately because of fear, and the tribunes also took it, for there was no longer any use in making opposition after the proposal was ratified."

This agrarian law did not affect the existing rights of property and heritable possession. It destined for distribution only the Italian domain land, that is to say, merely the territory of Capua, as this was all that belonged to the state.[2] If this was not enough to satisfy the demand, other Italian lands were to be bought out of the revenue from the eastern provinces at the taxable value rated in the censorial rolls. The number of persons settled on the *Campanus ager* is said[3] to have been 20,000 citizens who had each three children or more. The land was not distributed by lot, but at the pleasure of the commissioners, each one receiving some 30 jugera.[4] If 20,000 heads of families with their wives and three children in each family were settled in Campania, the whole number of settlers would be 100,000. This great number could scarcely leave Rome at one time, and we find

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[1] App., II, c. 11.

[2] App., II, c. 20, and Suetonius, *Julius Cæsar*, c. 20.

[3] Suetonius, *loc. cit.*

[4] Lange, *Röm. Alter.*, III, 273.

that as late as 51 the land was not all assigned.[1] While the tenor of the law does not imply that it was the intention to reward military service with grants of land, yet we may be sure that the veterans of Pompey were not forgotten.[2] There are no extant authorities which speak of the settlement of the Campanian land that say any thing about the soldiers settled there, unless it be Cicero. He speaks of the Campanian territory being taken out of the class that contributed a revenue to the state in order that it might be given to soldiers,[3] and he appears to refer to this time (59). Mommsen says that "the old soldiers as well as the temporary lessees to be ejected were simply recommended to the special consideration of the land distributors."[4] These latter were a commission of twenty appointed by the state. Cæsar, at his own request, was excused from serving, but Pompey and Crassus were the chief ones, thus furnishing sufficient reason for supposing that the soldier was provided for. The passage of this bill amounted in substance to the reëstablishment of the democratic colony founded by Marius and Cinna and afterwards abolished by Sulla.[5] Capua now became a Roman colony after having had no municipal constitution for one hundred and fifty-two years, when the city with all its dependencies was made a prefecture administered by a prefect of Rome. The revenues from this district were doubtless no longer needed, as those from Pontus and Syria[6] supplied all the needs of the government, but it is difficult to see what benefit could be reaped from the ejection of the thrifty farmers who, as tenants of the state, cultivated this territory and paid their rents regularly into the state coffers.

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[1] Cicero, *ad Att.*, VIII, 4.

[2] Dion Cassius, 45, c. 12; Cicero, *ad Att.*, X, 8.

[3] Cicero, *Phil.*, II, 39: "agrum Campanum, qui cum de vectigalibus eximebatur, ut militibus daretur." Marquardt u. Momm., *Röm. Alter.* IV, 114.

[4] Momm., IV, 244.

[5] Momm., III, 392, 428.

[6] Momm., III, 392, 428.

Wherever the new settlers were brought in, the old cultivators were turned out. No ancient writer says anything about the condition of these people. Cicero, in his second speech upon the land bill of Rullus, when speaking of the consequences that would follow its enactment, declared that if the Campanian cultivators were ejected they would have no place to go, and he truly says that such a measure would not be a settlement of plebeians upon the land, but an ejection and expulsion of them from it.[1]

Did it pay to send out a swarm of 100,000 idle paupers[2] who, for two generations, had been fed at the public charge from the corn-bins of Rome, simply in order that a like number of honest peasants, who had been not only self-supporting but had paid a large part of the Roman revenue, should be compelled to sacrifice their goods in a glutted market and become debauched and idle?

Sec. 18.—Distribution of Land after the Civil War between Cæsar and Pompey.

After Pompey had been vanquished at Pharsalia, and the republicans in Africa, Cæsar proceeded to distribute lands to his soldiers in accordance with his promise to give them lands, "not by taking them from their proprietors as Sulla did; not by mixing colonists with citizens despoiled of their goods and thus breeding perpetual strife,—but by dividing both public land and his own private property,[3] and, if this were not sufficient, by buying what was needed." Appian says that Cæsar did not succeed in carrying out these promises in full, but that veterans were in some cases settled upon lands legally belonging to others.[4] However, his soldiers were not huddled together like those of Sulla, in military colonies of

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[1] Cicero, *Rul.*, II, c. 31.
[2] Cicero, *Phil.*, II, 17.
[3] App., 94.
[4] App., II, 120.

their own, but when they settled in Italy they were scattered[1] as much as possible throughout the entire peninsula in order to make them more easily amenable to the laws.[2] In Campania, where Cæsar had lands at his disposal, the soldiers were settled in colonies, and so, close together. According to a letter of Cicero to Paetus, among the lands distributed were those of Veii and Capena. Historians have estimated that there were 100,000 soldiers who received lands in Italy by this distribution.

Sec. 19.—Distributions from the Death of Cæsar to the Time of Augustus.

The death of Cæsar in no way stopped the assignment of lands, but rather rendered all possession of land in Italy unsafe. A few weeks after his death two new laws were promulgated, one by the tribune, Lucius Antonius,[3] a *lex agraria*, and the other the *lex de colonis in agros deducendis* by the consul Marcus Antonius. The first was enacted on the 5th of June,[4] and ordered that all the *ager publicus* still at the disposal of the state, including the Pomptine marshes which Cæsar had at one time planned to drain, but had not, be divided among the veterans and citizens. It was abrogated by a *senatus consultum* of the 4th of January, 43,[5] but was nevertheless carried into execution almost immediately with great relentlessness towards the enemies[6] of Antonius. The second, the *Lex Antonia*, perished in April of 44, and had as a result the establishment of a colony near Casilinum,[7] which Cæsar had already colonized; the remainder of the domain

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[1] Long; Momm.

[2] Suetonius, *Julius Cæsar*, 38.

[3] L. Langii, Commentationis de Legibus Antoniis a Cicerone Phil., V, 4, 10; Commemoratis particula prior et posterior; Lipsiae, 1882; Lange, *Röm. Alter.*, III, 499, 503, 526; Marquardt u. Momm., *Röm. Alter.*, IV, 116.

[4] Lange, *Comm.*, II, 14.

[5] Cicero, *Phil.*, VI, 5, 14; XI, 6, 13.

[6] *Phil.*, V, 7, 20.

[7] Langii, *Comm.*, II, 14.

lands, the *ager Campanus* and *ager Leontinus*, was converted into a reward for the supporters of Antonius.[1] This was also set aside by the new law of the consul C. Vibius Pansa, in February, 43.[2]

Second Triumvirate. When Antony, Lepidus, and Octavius were reconciled, thus forming the second triumvirate, the treaty sanctioning this new state of affairs stipulated, in favor of the soldiers, a new distribution of lands, *i. e.*, a new agrarian law; Appian says:—"In order to increase the zeal of the army, the triumvirs promised to the soldiers, independent[3] of other results of victory and a gratuity of colonies, 18 Italian towns, important by means of their wealth and the richness of their lands. These were divided among the soldiers with their lands and buildings, as conquered towns. Among the number were Capua, Rhegium, Venusia, Beneventum, Nuceria and Vibo. Thus the most beautiful part of Italy became the prey of the soldiers."

Dion Cassius, Suetonius and Velleius Paterculus all mention these assignments. After the battle of Philippi and the defeat and death of Brutus and Cassius, 170,000 men were provided for, in accordance with these promises, out of the goods of the proscribed and the lands confiscated to the state. The lands of the towns mentioned in Appian were taken under the form of a forced sale, but the purchase money was never paid owing to the bankrupt condition of the treasury.

If we examine into the nature of these agrarian laws since the death of Julius Cæsar, we shall find that they differ in all respects from previous enactments:

1. They were executed at the expense not only of public domains but also of private property.

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[1] Cic., *Phil.*, II, 17, 43; II, 39, 101; III, 9, 22; VIII, 8, 26; Dio Cass., 45, 30; 46, 8.

[2] Cic., *Phil.*, V, 4, 10; V, 19, 53; X, 8, 17; VIII, 15, 31.

[3] "Δόσεσι τῶν Ἰταλικῶν πόλεων ὀκτωκαίδεκα . . . ὥσπερ αὐτοῖς ἀντὶ τῆς πολεμίας δορίληπτοι γενόμεναι. . . . Οὕτω μὲν τὰ κάλλιστα τῆς Ἰταλίας τῷ στρατῷ διέγρεφον." App., IV, 3.

2. They were the work of one man and not of the entire people.

3. The name of the people was never mentioned in these laws; they were enacted wholly for the profit of the soldiery. Before the distributions made by the triumvirate, the public lands had been absorbed, or at least the fragments remaining were in no way sufficient to recompense the service of the veterans.

Upon the establishment of the empire, the public lands became a vast manorial estate whose over-lord was the emperor himself.

FINIS.

IX

THE CONSTITUTIONAL DEVELOPMENT OF JAPAN 1853—1881

JOHNS HOPKINS UNIVERSITY STUDIES
IN
HISTORICAL AND POLITICAL SCIENCE
HERBERT B. ADAMS, Editor

History is past Politics and Politics present History.—*Freeman*

NINTH SERIES

IX

THE CONSTITUTIONAL DEVELOPMENT OF JAPAN. 1853–1881

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CONTENTS.

PAGE.

INTRODUCTORY 7

CHAP. I. (1853–1868). BEGINNING OF THE CONSTITUTIONAL MOVEMENT 9

The Circumstances that gave Rise to the Movement 9

The Account of Commodore Perry's Arrival by the Author of Genje Yumé Monogatari 10

Discussion between the Prince of Mito and the Tokugawa Officials at the Court of Yedo 12

Conclusion of Treaty between the United States and Japan 14

The Old Prince of Mito, Nariaki 14

Ii Kamon No Kami 15

Bombardments of Kagoshima and Shimonosheki 16

The Effects of the Bombardment 16

1. Showed the Weakness of the Daimios and the Strength of Foreigners 16

2. Showed the Necessity of National Union, and of the Reconstruction of the Administrative Machinery of the Emp re.. 17

Great Councils of Kuges and Daimios 17

1. Their Nature and Organization 17

2. How they originated 19

3. In them lay the Germ of the future Constitutional Parliament of Japan 20

CHAP. II. (1868–1869). THE RESTORATION 21

Causes of the Downfall of the Shogunate 21

1. Revival of Learning 21

2. Revival of Shintoism 23

3. Jealousy and Cupidity of the Southern Daimios 24

The Resignation of the Shogun 25

The Motive of his Resignation 26

The Government of the Restoration 28

1. Its Organization 28

2. Its Departments 28

Foreign Policy of the New Government 29

Removal of the Capital to Tokio 33

The Charter Oath of the Emperor, April 17, 1869 33

The Kogisho 33

1. Its Origin 34

2. Its Composition 35

3. Its Nature 35

CHAP. III. (1869-1871). THE ABOLITION OF FEUDALISM. 37
Memorial of President of the Kogisho..... 37
Abolition Scheme of Scholars is backed by the Southern Daimios 38
Memorial of the Southern Daimios..... 38
Imperial Decree of 1871, abolishing Feudalism 39
Causes of the Overthrow of Feudalism 40

CHAP. IV. INFLUENCES THAT SHAPED THE GROWTH OF THE REPRESENTATIVE IDEA OF GOVERNMENT.. 42
John Stewart Mill's Enumeration of the Social Conditions necessary for the Success of Representative Government. 42
Japan of 1871 not yet Ready for the Adoption of Representative Government..... 42
Political Activity of a Nation not isolated from other Spheres of its Activities..... 43
Japan's Political Development greatly aided by her Social, Educational, Industrial and Religious Changes. 43
Sketch of the Development of these Non-political Institutions from 1868 to 1881 44
1. Means of Communication 44
a. Telegraph 44
b. Postal System..... 45
c. Railroad..... 45
d. Steamers and the Coasting Trade 45
2. Educational Institutions..... 46
3. Newspapers 47
Changes in Law and Religion..... 47

CHAP. V. (1871-1881). PROGRESS OF THE CONSTITUTIONAL MOVEMENT FROM THE ABOLITION OF FEUDALISM TO THE PROCLAMATION OF OCTOBER 12, 1881 49
Leaders of the Restoration 49
Effect of the Overthrow of Feudalism..... 50
The Iwakura Embassy..... 50
Iwakura, Ito, Inouye..... 51
Fukuzawa..... 53
The Press and its Influences..... 53
Ri-shi-sha and Count Itagaki..... 54
Memorials of Ri-shi-sha to the Emperor..... 54
Establishment of Local Assemblies..... 55
The Proclamation of October 12, 1881, to establish a Parliament in 1890..... 56

THE CONSTITUTIONAL DEVELOPMENT OF JAPAN. 1853—1881.

INTRODUCTORY.

The power which destroyed Japanese feudalism and changed in that country an absolute into a constitutional monarchy was a resultant of manifold forces. The most apparent of these forces is the foreign influence. Forces less visible but more potent, tending in this direction, are those influences resulting from the growth of commerce and trade, from the diffusion of western science and knowledge among the people, and from the changes in social habits and religious beliefs. The truth of the solidarity of the varied interests of a social organism is nowhere so well exemplified as in the history of modern Japan. Her remarkable political development would have been impossible had there been no corresponding social, educational, religious, economic and industrial changes. In order to trace the constitutional development of New Japan, it is therefore necessary:

1. To ascertain the political condition of the country at and after the advent of foreigners in 1853.

2. To describe the form of government of the Restoration.

3. To examine the state of commerce, industry, education and social life of Japan at each stage of her political transformations.

4. To recount the constitutional changes from the Restoration to the Promulgation of the New Constitution.

As a novice in travel marks the broad outlines, the general features and more important products of the country he

visits for the first time, so I shall dwell upon the historic landmarks of Japanese constitutional development. This development no writer, native or foreign, has yet attempted to trace. I shall withstand as much as possible the temptation to refer to the multitude of events which are more or less associated with the constitutional movement. I shall endeavor to ascertain from the edicts, decrees, and proclamations of the Emperor, from the orders and manifestos of the Shogun, from the native authors and journals, from the memorials and correspondence of prominent men, both native and foreign, the trend of our constitutional development. I shall also endeavor to note the leading ideas and principles which, after manifesting themselves in various forms, have at last crystallized into the New Constitution of Japan.

CHAPTER I.

Beginning of the Constitutional Movement.

The constitutional movement of Japan began in a spontaneous agitation of the whole body politic when the nation was irritated by the sudden contact with foreigners. The sense of national weakness added a force to this agitation. Had not the foreigners come, the Restoration might have been effected, feudalism might have been abolished, but the new Japanese constitution would hardly have seen the day. Had the government of Japan at the time of the advent of foreigners been in the strong hand of a Taiko or an Iyeyasu, the rulers might have been greatly exercised by the extraordinary event, but public opinion for reform would hardly have been called forth, and the birth of constitutional liberty would long have been delayed. As the vices of King John and the indifference and ignorance of the first two Georges of England begat the strength and hope of the English Parliament, so the public opinion of Japan sprouted out of the ruins of the Shogunate régime. We must therefore seek for the beginning of the Constitutional Movement of Japan in the peculiar circumstances in which she found herself between 1853 and 1868.

The advent of Commodore Perry in 1853 was to Japan like the intrusion of a foreign queen into a beehive. The country was stirred to its depth. Let us note what a native chronicler[1] says about the condition of Japan at the arrival of Perry:

"It was in the summer of 1853 that an individual named Perry, who called himself the envoy of the United States of

[1] Genje Yume Monogatari. Translated by Mr. Ernest Satow, and published in the columns of the *Japan Mail*.

America, suddenly arrived at Uraga, in the Province of Sagami, with four ships of war, declaring that he brought a letter from his country to Japan and that he wished to deliver it to the sovereign. The governor of the place, Toda Idzu No Kami, much alarmed by this extraordinary event, hastened to the spot to inform himself of its meaning. The envoy stated, in reply to questions, that he desired to see a chief minister in order to explain the object of his visit and to hand over to him the letter with which he was charged. The governor then despatched a messenger on horseback with all haste to carry this information to the castle of Yedo, where a great scene of confusion ensued on his arrival. Fresh messengers followed, and the Shogun Iyeyoshi, on receiving them, was exceedingly troubled, and summoned all the officials[1] to a council. At first the affair seemed so sudden and so formidable that they were too alarmed to open their mouths, but in the end orders were issued to the great clans to keep strict watch at various points on the shore, as it was possible that the 'barbarian' vessels might proceed to commit acts of violence. Presently a learned Chinese scholar was sent to Uraga, had an interview with the American envoy, and returned with the letter, which expressed the desire of the United States to establish friendship and intercourse with Japan, and said, according to this account, that if they met with a refusal they should commence hostilities. Thereupon the Shogun was greatly distressed, and again summoned a council. He also asked the opinion of the Daimios. The assembled officials were exceedingly disturbed, and nearly broke their hearts over consultations which lasted all day and all night. The nobles and retired nobles in Yedo were informed that they were at liberty to state any ideas they might have on the subject, and, although they all gave their opinions, the diversity of propositions was so great that no decision was arrived at. The military class had, during a long peace, neglected military arts; they

[1] The original gives names of some prominent officials thus summoned.

had given themselves up to pleasure and luxury, and there were very few who had put on armor for many years, so that they were greatly alarmed at the prospect that war might break out at a moment's notice, and began to run hither and thither in search of arms. The city of Yedo and the surrounding villages were in a great tumult. And there was such a state of confusion among all classes that the governors of the city were compelled to issue a notification to the people, and this in the end had the effect of quieting the general anxiety. But in the castle never was a decision further from being arrived at, and, whilst time was being thus idly wasted, the envoy was constantly demanding an answer. So at last they decided that it would be best to arrange the affair quietly, to give the foreigners the articles they wanted, and to put off sending an answer to the letter—to tell the envoy that in an affair of such importance to the state no decision could be arrived at without mature consideration, and that he had better go away; that in a short time he should get a definite answer. The envoy agreed, and after sending a message to say that he should return in the following spring for his answer, set sail from Uraga with his four ships."[1]

Thus was the renowned commander kept away for awhile. He went, however, of his own accord. Perry was an astute diplomatist. He knew that time was needed for the impressions which he and his magnificent fleet had made upon the country to produce their natural effect.

The news of Perry's visit and demands spread far and wide with remarkable rapidity. The government and the people were deeply stirred. Soon the song of the "red-bearded barbarians" and of the black ships was in everybody's mouth. The question "What shall Japan do when the barbarians come next spring?" became the absorbing theme of the day.

[1] This is also quoted in F. O. Adams's History of Japan, Vol. I., p. 109. I have compared the passage with the original and quote here with some modifications in the translation.

There was now but one of two policies which Japan could pursue, either to shut up the country or to admit the foreigners' demand. There was no middle course left. The American envoy would no longer listen to the dilatory policy with which the Japanese had just bought a few months' respite from anxiety.

The majority of the ruling class, the Samurai, were in favor of the exclusion policy. So was the court of Kioto. But the views of the court of Yedo were different. The court of Yedo had many men of intelligence, common sense and experience—men who had seen the American envoy and his squadron, equipped with all the contrivances for killing men and devastating the country. These men knew too well that resistance to the foreigners was futile and perilous.

Thus was the country early divided into two clearly defined parties, the Jo-i[1] party and the Kai-Koku party.

Meanwhile, the autumn and winter of 1853 passed. The spring of 1854 soon came, and with it the intractable "barbarians." Let us hear the author of Genje Yume Monogatari relate the return of Perry and the great discussion that ensued at the court of Yedo:

"Early in 1854 Commodore Perry returned, and the question of acceding to his demands was again hotly debated. The old prince of Mito was opposed to it, and contended that the admission of foreigners into Japan would ruin it. 'At first,' said he, 'they will give us philosophical instruments, machinery and other curiosities; will take ignorant people in, and, trade being their chief object, they will manage bit by bit to impoverish the country, after which they will treat us just as they like—perhaps behave with the greatest rudeness and insult us, and end by swallowing up Japan. If we do not drive them away now we shall never have another opportunity. If we now resort to a dilatory method of proceeding we shall regret it afterwards when it will be of no use.'

[1] Jo-i means to expel the barbarians; Kai-Koku means to open the country.

"The officials (of the Shogun), however, argued otherwise and said: 'If we try to drive them away they will immediately commence hostilities, and then we shall be obliged to fight. If we once get into a dispute we shall have an enemy to fight who will not be easily disposed of. He does not care how long a time he must spend over it, but he will come with myriads of men-of-war and surround our shores completely; he will capture our junks and blockade our ports, and deprive us of all hope of protecting our coasts. However large a number of ships we might destroy, he is so accustomed to that sort of thing that he would not care in the least. Even supposing that our troops were animated by patriotic zeal in the commencement of the war, after they had been fighting for several years their patriotic zeal would naturally become relaxed, the soldiers would become fatigued, and for this we should have to thank ourselves. Soldiers who have distinguished themselves are rewarded by grants of land, or else you attack and seize the enemy's territory and that becomes your own property; so every man is encouraged to fight his best. But in a war with foreign countries a man may undergo hardships for years, may fight as if his life were worth nothing, and, as all the land in this country already has owners, there will be none to be given away as rewards; so we shall have to give rewards in words or money. In time the country would be put to an immense expense and the people be plunged into misery. Rather than allow this, as we are not the equals of foreigners in the mechanical arts, let us have intercourse with foreign countries, learn their drill and tactics, and when we have made the nation as united as one family, we shall be able to go abroad and give lands in foreign countries to those who have distinguished themselves in battle. The soldiers will vie with one another in displaying their intrepidity, and it will not be too late then to declare war. Now we shall have to defend ourselves against these foreign enemies, skilled in the use of mechanical appliances, with our soldiers whose military skill has considerably

diminished during a long peace of three hundred years, and we certainly could not feel sure of victory, especially in a naval war.'"[1]

The Kai-Koku party, the party in favor of opening the country, triumphed, and the treaty was finally concluded between the United States and Japan on the 31st of March, 1854. After the return of Commodore Perry to America, Townsend Harris was sent by the United States Government as Consul-General to Japan. He negotiated the commercial treaty between the United States and Japan on July 29, 1858.

At the heels of the Americans followed the English, French, Russians, Dutch, and other nations. Japan's foreign relations became more and more complicated and therefore difficult to manage.

The discussion quoted above is a type of the arguments used by the Jo-i party and the Kai-Koku party. The history of Japanese politics from 1853 to 1868 is the history of the struggle between these two parties, each of which soon changed its name. As the Jo-i party allied itself with the court of Kioto, it became the O-sei or Restoration party. As the Kai-Koku party was associated with the court of Shogun, it became the Bakufu party. The struggle ended in the triumph of the Restoration party. But by that time the Jo-i party, from a cause which I shall soon mention, had been completely transformed and converted to the Western ideas.

Among the leaders of the Jo-i party was Nariaki, the old prince of Mito. He belonged to one of the San Kay (three families), out of which Iyeyasu ordered the Shogun to be chosen. He was connected by marriage with the families of the Emperor and the highest Kuges in Miako, and with the wealthiest Daimios. In power the Mito family thus ranked high among the Daimios. Among the scholars the Prince of Mito was popular. The prestige of his great ancestor, the compiler of Dai-Nihon-Shi, had not yet died out. The Prince of Mito was thus naturally looked up to

[1] Given also in Kai-Koku Simatsu, p. 166; Ansei-Kiji, pp. 219, 220.

by the scholars as the man of right principles and of noble ideas. A shrewd, clever, and scheming old man, the Prince of Mito now became the defender of the cause of the Emperor and the mouthpiece of the conservative party.

At the head of the Bakufu party was a man of iron and fertile resources, Ii Kamon No Kami. He was the Daimio of Hikone, a castled town and fief on Lake Biwa, in Mino. His revenue was small, being only three hundred and fifty thousand koku. But in position and power none in the empire could rival him. He was the head of the Fudai Daimios. His family was called the Dodai or foundation-stone of the power of the Tokugawa dynasty. His ancestor, Ii Nawo Massa, had been lieutenant-general and right-hand man of Iyeyas. Ii Kamon No Kami, owing to the mental infirmity of the reigning Shogun, had lately become his regent. Bold, ambitious, able, and unscrupulous, Ii was the Richelieu of Japan. From this time on till his assassination on March 23, 1860, he virtually ruled the empire, and, in direct contravention to the imperial will, negotiated with foreign nations, as we have seen, for the opening of ports for trade with them. He was styled the "swaggering prime minister," and his name was long pronounced with contempt and odium. Lately, however, his good name has been rescued and his fame restored by the noble effort of an able writer, Mr. Saburo Shimada.[1] But this able prime minister fell on March 23, 1860, by the sword of Mito ronins, who alleged, as the pretext of their crime, that "Ii Kamon No Kami had insulted the imperial decree and, careless of the misery of the people, but making foreign intercourse his chief aim, had opened ports." "The position of the government upon the death of the regent was that of helpless inactivity. The sudden removal of the foremost man of the empire was as the removal of the fly-wheel from a piece of complicated machinery. The whole empire stood aghast, expecting and fearing some great political convulsion."[2]

[1] Life of Ii Nawosuke Tokyo, 1888.

[2] Dickson's Japan, p. 454.

The Shogun began to make a compromise to unite the Emperor's power and the Shogun's, by taking the sister of the Emperor for his wife.

Meanwhile great events were taking place in the southern corner of Kiushiu and on the promontory of Shikoku, events which were to effect great changes in men's ideas. These were the bombardments of Kagoshima and of Shimonosheki, the first on August 11, 1863, the second on September 5, 1864. I shall not dwell here on the injustice of these barbarous and heathenish acts of the so-called civilized and Christian nations; for I am not writing a political pamphlet. But impartially let us note the great effects of these bombardments.

1. These conflicts showed on a grand but sad scale the weakness of the Daimios, even the most powerful of them, and, on the other hand, the power of the foreigners and their rifled cannon and steamers. The following Japanese memorandum expresses this point: "Satsuma's eyes were opened since the fight of Kagoshima, and affairs appeared to him in a new light; he changed in favor of foreigners, and thought now of making his country powerful and completing his armaments."[1]

The Emperor also wrote in a rather pathetic tone to the Shogun touching the relative strength of the Japanese and the foreigners: "I held a council the other day with my military nobility (Daimios and nobles), but unfortunately inured to the habits of peace, which for more than two hundred years has existed in our country, we are unable to exclude and subdue our foreign enemies by the forcible means of war. . . . .

"If we compare our Japanese ships of war and cannon to those of the barbarians, we feel certain that they are not sufficient to inflict terror upon the foreign barbarians, and are also insufficient to make the splendor of Japan shine in

[1] American Executive Document, Diplomatic Correspondence, Part 3, 1865–66, p. 233, 1st Sess. 39th Cong.

foreign countries. I should think that we only should make ourselves ridiculous in the eyes of the barbarians."[1]

From the time of the bombardment, Satsuma and Choshiu began to introduce European machinery and inventions, to employ skilled Europeans to teach them, and to send their young men to Europe and America.

II. These bombardments showed the necessity of national union. Whether she would repel or receive the foreigner, Japan must present a united front. To this end, great change in the internal constitution of the empire was needed; the internal resources of the nation had to be gathered into a common treasury; the police and the taxes had to be recognized as national, not as belonging to petty local chieftains; the power of the feudal lords had to be broken in order to reconstitute Japan as a single strong state under a single head. These are the ideas which led the way to the Restoration of 1868. Thus the bombardments of Kagoshima and Shimonosheki may be said to have helped indirectly in the Restoration of that year. But before we proceed to the history of the Restoration, let us examine what were the great Councils of Kuges and Daimios, which were sometimes convened during the period from 1857 to 1868.

The Council of Kuges was occasionally convened by the order of the Emperor. It was composed of the princes of the blood, nobles, and courtiers. The Council of Daimios was now and then summoned either by the Emperor or by the Shogun. It was composed mostly of the Daimios. These councils were like the Witenagemot of England, formed of the wise and influential men of the kingdom. As the Daimios had far more weight in the political scale of the realm than the Kuges, so the council of the Daimios was of far more importance than that of the Kuges. But it must not be understood that these councils were regular meetings held in the modern parliamentary way; nor that they had anything

[1] American Executive Document, Diplomatic Correspondence, Part 3, 1864-65, p. 502, 2d Sess. 38th Cong.

like the powers of the British Parliament or of the American Congress. These councils of Japan were called into spasmodic life simply by the necessity of the time. They were held either at the court of Kioto or that of Yedo, or at other places appointed for the purpose. The Kuges or Daimios assembled rather in an informal way, measured by modern parliamentary procedure, but in accordance with the court etiquette of the time, whose most minute regulations and rules have often embarrassed and plagued the modern ministers accredited to the court of the Emperor. Then these councils proceeded to discuss the burning questions of the day, among which the most prominent was, of course, the foreign policy. The earliest instance of the meeting of the Council of Kuges was immediately after the news of Perry's arrival had reached the court of Kioto. "Upon this," says the author of Genje Yume Monogatari, "the Emperor was much disturbed, and called a council, which was attended by a number of princes of the blood and Kuges, and much violent language was uttered."

From this time on we meet often with the record of these councils.[1] A native chronicler records that on the 29th day of the 12th month of 1857 "a meeting of all Daimios (present in Yedo) was held in the Haku-sho-in, a large hall in the castle of Yedo. The deliberations were not over till two o'clock on the morning of the 30th."

Soon after this the Emperor ordered the Shogun to come to Kioto with all the Daimios and ascertain the opinion of the country. But the Shogun did not come, so the Emperor sent his envoy, Ohara Sammi, and called the meeting of the Daimios at Yedo in 1862, in which the noted Shimadzu Saburo was also present.

In 1864 the council of Daimios was again held, and Minister Pruyn, in his letter to Mr. Seward, bears witness of the proceeding: "It is understood the great council of

[1] See Ansei-Kiji, pages 1, 3, 57, 59, 61, 174, 192, 352; Bosin-Simatsu, Vol. II., pp. 4, 69; Vol. III., pp. 379, 414; Vol. IV., pp. 121, 152.

Daimios is again in session; that the question of the foreign policy of the government is again under consideration, and that the opposite parties are pretty evenly balanced."[1]

From this time the council of Daimios was held every year, sometimes many times in the year, till the Revolution of 1868. These examples will suffice to show the nature and purpose of these councils of Kuges and Daimios. Let us next consider how these councils originated.

The political development of Japan gives another illustration of one of the truths which Mr. Herbert Spencer unfolds in his Principles of Sociology. "Everywhere the wars between societies," says he, "originate governmental structures, and are causes of all such improvements in those structures as increase the efficiency of corporate action against environing societies."[2]

Experience has shown that representative government is the most efficient in securing the corporate action of the various members of the body politic against foreign enemies. When a country is threatened with foreign invasion, when the corporate action of its citizens against their enemy is needed, it becomes an imperative necessity to consult public opinion. In such a time centralization is needed. Hence the first move of Japan after the advent of foreigners was to bring the scattered parts of the country together and unite them under one head.

Japan had hitherto no formidable foreign enemy on her shores. So her governmental system—the regulating system of the social organism—received no impetus for self-development. But as soon as a formidable people, either as allies or foes, appeared on the scene in 1853, we immediately see the remarkable change in the state system of regulation in Japan. It became necessary to consult public opinion. Councils of Kuges and Daimios and meetings of Samurai sprung forth spontaneously.

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[1] American Executive Document, Diplomatic Correspondence, Part 3, 1864-65, p. 486, 2d Sess. 38th Cong.

[2] Principles of Sociology, p. 540.

I believe, with Guizot, that the germ of representative government was not necessarily "in the woods of Germany," as Montesquieu asserts, or in the Witenagemot of England; that the glory of having a free government is not necessarily confined to the Aryan family or to its more favored branch, the Anglo-Saxons. I believe that the seed of representative government is implanted in the very nature of human society and of the human mind. When the human mind and the social organism reach a certain stage of development, when they are placed in such an environment as to call forth a united and harmonious action of the body politic, when education is diffused among the masses and every member of the community attains a certain degree of his individuality and importance, when the military form of society transforms itself into the industrial, then the representative idea of government springs forth naturally and irresistibly. And no tyrant, no despot, can obstruct the triumphal march of liberty.

Whatever may be said about the soundness of the above speculation, it is certain that in the great councils of Kuges and Daimios and in the discussions of the Samurai, which the advent of the foreigners called into being, lay the germ of the future constitutional parliament of Japan.

CHAPTER II.

The Restoration.

In the last chapter we have noticed what a commotion had been caused in Japan by the sudden advent of Commodore Perry, how the councils of Kuges and Daimios were called into spontaneous life by the dread of foreigners and by the sense of national weakness, and how the bombardments of Kagoshima and Shimonosheki tested these fears and taught the necessity of national union. I have remarked that free government is not necessarily the sole heritage of the Aryan race, but that the presence of foreigners, the change of the military form of society into the industrial form, the increase in importance of the individual in the community, are sure to breed a free and representative system of government.

In the following chapter we shall see the downfall of the Shogunate, the restoration of the imperial power to its pristine vigor, and the destruction of feudalism.

"The study of constitutional history is essentially a tracing of causes and consequences," says Bishop Stubbs, "not the collection of a multitude of facts and views, but the piecing of links of a perfect chain."

I shall therefore not dwell upon the details of the events which led to the downfall of the Shogunate, but immediately enter into an inquiry concerning the causes.

Three causes led to the final overthrow of the Shogunate:

I. The Revival of Learning. The last half of the eighteenth and the first half of the present century witnessed in Japan an unusual intellectual activity. The long peace and prosperity of the country under the rule of the Tokugawa dynasties had fostered in every way the growth of literature and

art. The Shoguns, from policy or from taste, either to find a harmless vent for the restless spirit of the Samura or from pure love of learning, have been constant patrons of literature. The Daimios, too, as a means of spending their leisure hours when they were not out hawking or revelling with their mistresses, gave no inattentive ear to the readings and lectures of learned men. Each Daimioate took pride in the number and fame of her own learned sons. Thus throughout the country eminent scholars arose. With them a new era of literature dawned upon the land. The new literature changed its tone. Instead of the servility, faint suggestiveness, and restrained politeness characteristic of the literature from the Gen-hei period to the first half of the Tokugawa period, that of the Revival Era began to wear a bolder and freer aspect. History came to be recorded with more truthfulness and boldness than ever before.

But as the ancient histories were studied and the old constitution was brought into light, the real nature of the Shogunate began to reveal itself. To the eyes of the historians it became clear that the Shogunate was nothing but a military usurpation, sustained by fraud and corruption; that the Emperor, who was at that time, in plain words, imprisoned at the court of Kioto, was the real source of power and honor. "If this be the case, what ought we do?" was the natural question of these loyal subjects of the Emperor. The natural conclusion followed: the military usurper must be overthrown and the rightful ruler recognized. This was the sum and substance of the political programme of the Imperialists. The first sound of the trumpet against the Shogunate rose from the learned hall of the Prince of Mito, Komon. He, with the assistance of a host of scholars, finished his great work, the Dai Nihon Shi, or History of Japan, in 1715. It was not printed till 1851, but was copied from hand to hand by eager students, like the Bible by the medieval monks, or the works of Plato and Aristotle by the Humanists. The Dai Nihon Shi soon became a classic, and had such an influence in restoring

the power of the Emperor that Mr. Ernest Satow justly calls its composer "the real author of the movement which culminated in the revolution of 1868." The voice of the Prince of Mito was soon caught up by the more celebrated scholar Rai Sanyo (1780–1833). A poet, an historian, and a zealous patriot, Rai Sanyo was the Arndt of Japan. He outlined in his Nihon Guai Shi the rise and fall of the Minister of State and the Shoguns, and with satire, invective, and the enthusiasm of a patriot, urged the unlawfulness of the usurpation of the imperial power by these mayors of the palace. In his Sei-Ki, or political history of Japan, he traced the history of the imperial family, and mourned with characteristic pathos the decadence of the imperial power. The labors of these historians and scholars bore in time abundant fruit. Some of their disciples became men of will and action: Sakuma Shozan, Yoshida Toraziro, Gesho, Yokoi Heishiro, and later Saigo, Okubo, Kido, and hosts of others, who ultimately realized the dreams of their masters. Out of the literary seed which scholars like Rai Sanyo spread broadcast over the country thus grew hands of iron and hearts of steel. This process shows how closely related are history and politics, and affords another illustration of the significance of the epigrammatic expression of Professor Freeman: "History is past politics, and politics present history."

II. Another tributary stream which helped to swell the tide flowing toward the Emperor was the revival of Shintoism. The revival of learning is sure to be followed by the revival of religion. This is shown in the history of the Reformation in Europe, which was preceded by the revival of learning. Since the expulsion of Christianity from Japan in the sixteenth century, which was effected more from political than religious motives, laissez-faire was the steadfast policy of the Japanese rulers toward religious matters. The founder of the Tokugawa dynasty had laid down in his "Legacy" the policy to be pursued by his descendants. "Now any one of the people," says Iyeyasu, "can adhere to

which (religion) he pleases (except the Christian); and there must be no wrangling among sects to the disturbance of the peace of the Empire." Thus while the people in the West, who worshipped the Prince of Peace, in his abused name were cutting each other's throat, destroying each other's property, torturing and proselyting by rack and flames, the islanders on the West Pacific coast were enjoying complete religious toleration. Three religions—Shintoism, Buddhism, and Confucianism—lived together in peace. In such a state of unrestricted competition among various religions, the universal law of the survival of the fittest acts freely. Buddhism was the fittest and became the predominant religion. Shintoism was the weakest and sank into helpless desuetude. But with the revival of learning, as Kojiki and other ancient literature were studied with assiduity, Shintoism began to revive. Its cause found worthy defenders in Motoori and Hirata. They are among the greatest Shintoists Japan has ever seen.

Now, according to Shintoism, Japan is a holy land. It was made by the gods, whose lineal descendant is the Emperor. Hence he must be revered and worshipped as a god. This is the substance of Shintoism. The political bearing of such a doctrine upon the then existing status of the country is apparent. The Emperor, who is a god, the fountain of all virtue, honor, and authority, is now a prisoner at the court of Kioto, under the iron hand of the Tokugawa Shoguns. This state of impiety and irreverence can never be tolerated by the devout Shintoists. The Shogun must be dethroned and the Emperor raised to power. Here the line of arguments of the Shintoists meets with that of the scholars we have noted above. Thus both scholars and Shintoists have converted themselves into politicians who have at heart the restoration of the Emperor.

III. Another cause which led to the overthrow of the Shogunate was the jealousy and cupidity of the Southern Daimios. Notably among them were the Daimios of Satsuma,

Choshiu, Tosa, and Hizen. Their ancestors "had of old held equal rank and power with Iyeyasu, until the fortunes of war turned against them. They had been overcome by force, or had sullenly surrendered in face of overwhelming odds. Their adherence to the Tokugawas was but nominal, and only the strong pressure of superior power was able to wring from them a haughty semblance of obedience. They chafed perpetually under the rule of one who was in reality a vassal like themselves."[1] They now saw in the rising tide of public sentiment against the Tokugawa Shogunate a rare opportunity of accomplishing their cherished aim. They lent their arms and money for the support of the patriots in carrying out their plan. Satsuma and Choshiu became the rendezvous of eminent scholars and zealous patriots. And in the council-halls of Satsuma and Choshiu were hatched the plots which were soon to overthrow the effete Shogunate.

Thus everything was ready for the revolution of 1868 before Perry came. We saw the Shogun, under the bombastic title of Tycoon, in spite of the remonstrance of the Emperor and his court, conclude a treaty with Perry at Kanagawa in 1854. Here at last was found a pretext for the Imperialists to raise arms against the Shogun. The Shogun or his ministers had no right to make treaties with foreigners. Such an act was, in the eyes of the patriots, heinous treason. The cry of "Destroy the Shogunate and raise the Emperor to his proper throne!" rang from one end of the empire to the other. The constant disturbance of the country, the difficulty of foreign intercourse, the sense of necessity of a single and undoubted authority over the land, and the outcry of the Samurai thus raised against the Shogun, finally led to his resignation on November 19, 1867. His letter of resignation, in the form of a manifesto to the Daimios, runs thus:

"A retrospect of the various changes through which the empire has passed shows us that after the decadence of the monarchical authority, power passed into the hands of the

[1] The Mikado's Empire. Griffis, p. 301.

Minister of State; that by the wars of 1156 to 1159 the governmental power came into the hands of the military class. My ancestor received greater marks of confidence than any before him, and his descendants have succeeded him for more than two hundred years. Though I perform the same duties, the objects of government and the penal laws have not been attained, and it is with feelings of greatest humiliation that I find myself obliged to ackowledge my own want of virtue as the cause of the present state of things. Moreover, our intercourse with foreign powers becomes daily more extensive, and our foreign policy cannot be pursued unless directed by the whole power of the country.

"If, therefore, the old régime be changed and the governmental authority be restored to the imperial court, if the councils of the whole empire be collected and the wise decisions received, and if we unite with all our heart and with all our strength to protect and maintain the empire, it will be able to range itself with the nations of the earth. This comprises our whole duty towards our country.

"However, if you (the Daimios) have any particular ideas on the subject, you may state them without reserve."[1]

The resignation of the Shogun was accepted by the Emperor by the following imperial order, issued on the 10th day of the 12th month: "It has pleased the Emperor to dismiss the present Shogun, at his request, from the office of Shogun."

As to the full intent and motive of the Shogun in resigning his power, let him further speak himself. In the interview of the British minister, Sir Harry S. Parkes, and the French minister, M. Leon Roches, with the Shogun, it is stated that he said: "I became convinced last autumn that the country would no longer be successfully governed while the power was divided between the Emperor and myself. The country had two centres, from which orders of an opposite nature proceeded. Thus, in the matter of the opening

[1]American Executive Document, Diplomatic Correspondence, 1867, Part II., p. 78, 2d Sess. 40th Cong. See also Bosin-Simatsu, Vol. I., p. 2.

of Hiogo and Osako, which I quote as an example of this conflict of authority, I was myself convinced that the stipulations of the treaties must be observed, but the assent of the Emperor to my representations on this subject was given reluctantly. I therefore, for the good of my country, informed the Emperor that I resigned the governing power, with the understanding that an assembly of Daimios was convened for the purpose of deciding in what manner, and by whom, the government in future should be carried on. In acting thus, I sunk my own interests and power handed down to me by my ancestors, in the more important interests of the country.[1] . . . .

"My policy, from the commencement, has been to determine this question of the future form of government in a peaceful manner, and it is in pursuance of the same object that, instead of opposing force by force, I have retired from the scene of dispute. . . . .

"As to who is the sovereign of Japan, it is a question on which no one in Japan can entertain a doubt. The Emperor is the sovereign. My object from the first has been to take the will of the nation as to the future government. If the nation should decide that I ought to resign my powers, I am prepared to resign them for the good of my country. . . . .

"I have no other motive but the following: With an honest love for my country and the people, I resigned the governing power which I inherited from my ancestors, and with the mutual understanding that I should assemble all the nobles of the empire to discuss the question disinterestedly, and adopting the opinion of the majority, decide upon the reformation of the national constitution, I left the matter in the hands of the imperial court."[2]

Thus was the Shogunate overthrown and the Restoration effected. The civil war which soon followed need not detain

[1] American Executive Document, Diplomatic Correspondence, Vol. I., 1868–69, p. 620, 3d Sess. 40th Cong.

[2] American Executive Document, Diplomatic Correspondence, Vol. I., 1868–69, p. 622, 3d Sess. 40th Cong.

us, for the war itself had no great consequence as regards the constitutional development of the country.

Let us now consider the form of the new government. It is essentially that which prevailed in Japan before the development of feudalism. It is modelled on the form of government of the Osei era.

The new government was composed of:

1. Sosai ("Supreme Administrator"). He was assisted by Fuku, or Vice-Sosai. The Sosai resembled the British Premier, was the head of the chief council of the government.

2. Gijio, or "Supreme Council," whose function was to discuss all questions and suggest the method of their settlement to the Sosai. It was composed of ten members, five of whom were selected from the list of Kuges and five from the great Daimios.

3. Sanyo, or "Associate Council." They were subordinate officers, and were selected from the Daimios as well as from the retainers. This council finally came to have great influence, and ultimately transformed itself into the present cabinet.

The government was divided into eight departments:

1. The Sosai Department. This soon changed into Dai-jo-Kuan.

2. Jingi-Jimu-Kioku, or Department of the Shinto Religion. This department had charge of the Shinto temples, priests, and festivals.

3. Naikoku-Jimu-Kioku, or Department of Home Affairs. This department had charge of the capital and the five home provinces, of land and water transport in all the provinces, of post-towns and post-roads, of barriers and fairs, and of the governors of castles, towns, ports, etc.

4. Guaikoku-Jimu-Kioku, or Department of Foreign Affairs. This department had charge of foreign relations, treaties, trade, recovery of lands, and sustenance of the people.

5. Gumbu-Jimu-Kioku, or War Department. This department had charge of the naval and military forces, drilling, protection of the Emperor, and military defences in general.

6. Kuaikei-Jimu-Kioku, or Department of Finance. This department had charge of the registers of houses and population, of tariff and taxes, money, corn, accounts, tribute, building and repairs, salaries, public storehouses, and internal trade.

7. Keiho-Jimu-Kioku, or Judicial Department. This department had charge of the censorate, of inquisitions, arrests, trials, and the penal laws in general.

8. Seido-Jimu-Kioku, or Legislative Department. This department had charge of the superintendence of offices, enactments, sumptuary regulations, appointments, and all other laws and regulations,

"It is easy to destroy, but difficult to construct," is an old adage of statesmen. The truth of this utterance was soon realized by the leaders of the new government.

The first thing which the new government had to settle was its attitude toward foreign nations. The leaders of the government who had once opposed with such vehemence, as we have seen, the foreign policy of the Tokugawa Shogun, now that he had been overthrown, urged the necessity of amicable relations with foreign powers in the following memorable memorial[1] to the Dai-jo-Kuan (Government):

"The undersigned, servants of the Crown, respectfully believe that from ancient times decisions upon important questions concerning the welfare of the empire were arrived at after consideration of the actual political condition and its necessities, and that thus results were obtained, not of mere temporary brilliancy, but which bore good fruits in all time. . . . .

"Among other pressing duties of the present moment we venture to believe it to be pre-eminently important to set the question of foreign intercourse in a clear light.

[1] Translation from the Kioto Government Gazette of March, 1868. It is given in Diplomatic Correspondence of the U. S. A., 3d Sess. 40th Cong., Vol. I., 1868–69, p. 725.

"His Majesty's object in creating the office of administrator of foreign affairs, and selecting persons to fill it, and otherwise exerting himself in that direction, has been to show the people of his empire in what light to look on this matter, and we have felt the greatest pleasure in thinking that the imperial glory would now be made to shine forth before all nations. An ancient proverb says that 'Men's minds resemble each other as little as their faces,' nor have the upper and lower classes been able, up to the present, to hold with confidence a uniform opinion. It gives us some anxiety to feel that perhaps we may be following the bad example of the Chinese, who, fancying themselves alone great and worthy of respect, and despising foreigners as little better than beasts, have come to suffer defeats at their hands and to have it lorded over themselves by those foreigners.

"It appears to us, therefore, after mature reflection, that the most important duty we have at present is for high and low to unite harmoniously in understanding the condition of the age, in effecting a national reformation and commencing a great work, and that for this reason it is of the greatest necessity that we determine upon the attitude to be observed towards this question.

"Hitherto the empire has held itself aloof from other countries and is ignorant of the affairs of the world; the only object sought has been to give ourselves the least trouble, and by daily retrogression we are in danger of falling under foreign rule.

"By travelling to foreign countries and observing what good there is in them, by comparing their daily progress, the universality of enlightened government, of a sufficiency of military defences, and of abundant food for the people among them, with our present condition, the causes of prosperity and degeneracy may be plainly traced. . . . .

"Of late years the question of expelling the barbarians has been constantly agitated, and one or two Daimios have tried to expel them, but it is unnecessary to prove that this

was more than the strength of a single clan could accomplish. . . . .

"However, in order to restore the fallen fortunes of the empire and to make the imperial dignity respected abroad, it is necessary to make a firm resolution, and to get rid of the narrow-minded ideas which have prevailed hitherto. We pray that the important personages of the court will open their eyes and unite with those below them in establishing relations of amity in a single-minded manner, and that our deficiencies being supplied with what foreigners are superior in, an enduring government be established for future ages. Assist the Emperor in forming his decision wisely and in understanding the condition of the empire; let the foolish argument which has hitherto styled foreigners dogs and goats and barbarians be abandoned; let the court ceremonies, hitherto imitated from the Chinese, be reformed, and the foreign representatives be bidden to court in the manner prescribed by the rules current amongst all nations; and let this be publicly notified throughout the country, so that the countless people may be taught what is the light in which they are to regard this subject. This is our most earnest prayer, presented with all reverence and humility.

Echizen Saisho,
Tosa Sakio No Shosho,
Nagato Shosho,
Satsuma Shosho,
Aki Shosho,
Hoso Kawa Ukio Daibu."

The advice of these notables was well received. A formal invitation to an audience with the Emperor was extended to the foreign ambassadors. They soon accepted the invitation. Their appearance in the old anti-foreign city of Kioto, before the personage who was considered by the masses as divine, was significant. It put an end to the all-absorbing, all-perplexing theme of the day. The question of foreign policy was settled.

The next act of the statesmen of the Restoration was to sweep away the abuses of the court, and to establish the basis of a firm internal administration. The most effectual means of accomplishing this, it seemed to the sagacious statesmen, was to move the court from the place where those abuses had their roots. Ichizo Okubo,[1] a guiding spirit of the Restoration, presented the following memorial to the Emperor:

"The most pressing of your Majesty's pressing duties at the present moment is not to look at the empire alone and judge carelessly by appearances, but to consider carefully the actual state of the whole world; to reform the inveterate and slothful habits induced during several hundred years, and to give union to the nation. . . . .

"Hitherto the person whom we designate the sovereign has lived behind a screen, and, as if he were different from other human beings, has not been seen by more than a very limited number of Kuge; and as his heaven-conferred office of father to his people has been thereby unfulfilled, it is necessary that his office should be ascertained in accordance with this fundamental principle, and then the laws governing internal affairs may be established. . . . .

"In the present period of reformation and restoration of the government to its ancient monarchical form, the way to carry out the resolution of imitating the example of Japanese sages, and of surpassing the excellent governments of foreign nations, is to change the site of the capital. . . . .

"Osako is the fittest place for the capital. . . . . For the conduct of foreign relations, for enriching the country and strengthening its military power, for adopting successful means of offense and defense, for establishing an army and navy, the place is peculiarly fitted by its position. . . . . I most humbly pray your Majesty to open your eyes and make this reform. . . . .

OKUBO ICHIZO."[2]

[1] He afterwards changed his name into Toshimitsu Okubo.

[2] Translation is given in American Executive Document, Diplomatic Correspondence, Vol. I., 1868-69, p. 728, 3d Sess. 40th Cong.

The result of the memorial was the ultimate removal of the seat of government from Kioto to Yedo, which afterwards changed its name to Tokio, meaning eastern capital.

But the most important event of the Restoration, from the constitutional point of view, was the charter oath of five articles, taken by the present Emperor on the 17th of April, 1869, before the court and the assembly of Daimios. These articles were in substance as follows:

1. A deliberative assembly should be formed, and all measures be decided by public opinion.

2. The principles of social and political economics should be diligently studied by both the superior and inferior classes of our people.

3. Every one in the community shall be assisted to persevere in carrying out his will for all good purposes.

4. All the old absurd usages of former times should be disregarded, and the impartiality and justice displayed in the workings of nature be adopted as a basis of action.

5. Wisdom and ability should be sought after in all quarters of the world for the purpose of firmly establishing the foundations of the empire.

The Emperor's promise henceforth became the watchword of the nation.

And this resolution to form a deliberative assembly was soon put into practice. In 1869 was convened the Kogisho or "Parliament," as Sir Harry Parkes translates it in his despatch to the Earl of Clarendon. But before we proceed to the description of the nature and working of the Kogisho it is necessary to state that this plan had been already suggested by the Shogunate. A proclamation of the Shogun Keiki, issued on February 20, 1868, says: "As it is proper to determine the principle of the constitution of Japan with due regard to the wishes of the majority, I have resigned the supreme power to the Emperor's court, and advised that the opinions of all the Daimios should be taken . . . On examination of my household affairs (the administration of Sho-

gun's territories), many irregularities may exist which may dissatisfy the people, and which I therefore greatly deplore. Hence I intend to establish a Kogijio and to accept the opinion of the majority. Any one, therefore, who has an opinion to express may do so at that place and be free of apprehension."[1]

But this attempt of the Shogun to establish a sort of Parliament came to an end with his fall. This idea, however, was transmitted through the Shogunate officials to the government of the Restoration. In fact, this idea of consulting public opinion was, as I have repeatedly said, in the air. The leaders of the new government all felt, as one of them said to Messrs. F. O. Adams and Ernest Satow, that "the only way to allay the jealousies hitherto existing between several of the most powerful clans, and to ensure a solid and lasting union of conflicting interests, was to search for the nearest approach to an ideal constitution among those of Western countries . . . that the opinion of the majority was the only criterion of a public measure."[2]

Sir Harry Parkes was right when he told the Earl of Clarendon that "the establishment of such an institution (the Kogisho) formed one of the first objects of the promoters of the recent revolution."[3]

The Kogisho was opened on the 18th of April, 1869,[4] and the following message[5] from the throne was then delivered:

"Being on the point of visiting our eastern capital, we have convened the nobles of our court and the various princes in order to consult them upon the means of establishing the foundations of peaceful government. The laws and institutions are the basis of government. The petitions

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[1] American Executive Document, Diplomatic Correspondence, Vol. I., 1868–69, p. 687, 3d Sess. 40th Cong.

[2] F. O. Adams' History of Japan, Vol. II., p. 128.

[3] English State Papers, Vol. LXX., 1870, p. 9.

[4] 29th of the 2d month in the second year of Meiji, according to the old calendar.

[5] Translation is given in English State Papers, Vol. LXX., 1871, p. 12.

of the people at large cannot be lightly decided. It has been reported to us that brief rules and regulations have been fixed upon for the Parliament, and it seems good to us that the House should be opened at once. We exhort you to respect the laws of the House, to lay aside all private and selfish considerations, to conduct your debates with minuteness and firmness; above all things, to take the laws of our ancestors as 'basis,' and adapt yourselves to the feelings of men and to the spirit of the times. Distinguish clearly between those matters which are of immediate importance and those which may be delayed; between things which are less urgent and those which are pressing. In your several capacities argue with careful attention. When the results of your debate are communicated to us it shall be our duty to confirm them."

The Kogisho was composed mostly of the retainers of the Daimios, for the latter, having no experience of the earnest business of life, "were not eager to devote themselves to the labors of an onerous and voluntary office." Akidzuki Ukio No Suke was appointed President of the Kogisho.

The object of the Kogisho was to enable the government to sound public opinion on the various topics of the day, and to obtain the assistance of the country in the work of legislation by ascertaining whether the projects of the government were likely to be favorably received.

The Kogisho, like the Councils of Kuges and Daimios, was nothing but an experiment, a mere germ of a deliberative assembly, which only time and experience could bring to maturity. Still Kogisho was an advance over the council of Daimios. It had passed the stage resembling a mere deliberative meeting or quiet Quaker conference, where, for hours perhaps, nobody opens his mouth. It now bore an aspect of a political club meeting. But it was a quiet, peaceful, obedient debating society. It has left the record of its abortive undertakings in the "Kogisho Nishi" or journal of "Parliament." The Kogisho was dissolved in the year

of its birth. And the indifference of the public about its dissolution proves how small an influence it really had.

But a greater event than the dissolution of the Kogisho was pending before the public gaze. This was the abolition of feudalism, which we shall consider in the next chapter.

CHAPTER III.

The Abolition of Feudalism.

The measure to abolish feudalism was much discussed in the Kogisho before its dissolution. Prince Akidzuki, President of the Kogisho, had sent in the following memorial:

"After the government had been returned by the Tokugawa family into the hands of the Emperor, the calamity of war ensued, and the excellence of the newly established administration has not yet been able to perfect itself; if this continues, I am grieved to think how the people will give up their allegiance. Happily, the eastern and northern provinces have already been pacified and the country at large has at last recovered from its troubles. The government of the Emperor is taking new steps every day; this is truly a noble thing for the country. And yet when I reflect, I see that although there are many who profess loyalty, none have yet shown proof of it. The various princes have used their lands and their people for their own purposes; different laws have obtained in different places; the civil and criminal codes have been various in the various provinces. The clans have been called the screen of the country, but in truth they have caused its division. The internal relations having been confused, the strength of the country has been disunited and severed. How can our small country of Japan enter into fellowship with the countries beyond the sea? How can she hold up an example of a flourishing country? Let those who wish to show their faith and loyalty act in the following manner, that they may firmly establish the foundations of the Imperial Government:

1. Let them restore the territories which they have received from the Emperor and return to a constitutional and undivided country.

2. Let them abandon their titles, and under the name of Kuazoku (persons of honor) receive such small properties as may suffice for their wants.

3. Let the officers of the clans abandoning that title call themselves officers of the Emperor, receiving property equal to that which they have hitherto held.

Let these three important measures be adopted forthwith, that the empire may be raised on a basis imperishable for ages . . . 2nd year of Meiji (1869).

(Signed) AKIDZUKI UKIO NO SUKE."[1]

But politics is not an easy game—a game which a pedant or a sentimental scholar or an orator can leisurely play. It has to deal with passions, ambitions, and selfish interests of men, as well as with the moral and intellectual consciousness of the people. Tongue and pen wield, undoubtedly, a great influence in shaping the thought of the nation and impressing them with the importance of any political measure. But the tongue is as sounding brass and the pen as useless steel unless they are backed by force and money. Even in such a country as England, where tongue and pen seem to reign supreme, a prime minister before he forms his cabinet has to be closeted for hours with Mr. Rothschild. Fortunately this important measure of abolishing feudalism, which a few patriots had secretly plotted and which the scholars had noised abroad, was taken up first by the most powerful and wealthy Daimios of the country.

In the following noted memorial, after reviewing the political history of Japan during the past few hundred years, these Daimios said: "Now the great Government has been newly restored and the Emperor himself undertakes the direction of affairs. This is, indeed, a rare and mighty event. We have the name (of an Imperial Government), we must also have the fact. Our first duty is to illustrate our faithfulness and to prove our loyalty. When the line of

[1] Translation given in the English State Papers.

Tokugawa arose it divided the country amongst its kinsfolk, and there were many who founded the fortunes of their families upon it. They waited not to ask whether the lands and men that they received were the gift of the Emperor; for ages they continued to inherit these lands until this day. Others said that their possessions were the prize of their spears and bows, as if they had entered storehouses and stolen the treasure therein, boasting to the soldiers by whom they were surrounded that they had done this regardless of their lives. Those who enter storehouses are known by all men to be thieves, but those who rob lands and steal men are not looked upon with suspicion. How are loyalty and faith confused and destroyed!

"The place where we live is the Emperor's land and the food which we eat is grown by the Emperor's men. How can we make it our own? We now reverently offer up the list of our possessions and men, with the prayer that the Emperor will take good measures for rewarding those to whom reward is due and for taking from those to whom punishment is due. Let the imperial orders be issued for altering and remodelling the territories of the various clans. Let the civil and penal codes, the military laws down to the rules for uniform and the construction of engines of war, all proceed from the Emperor; let all the affairs of the empire, great and small, be referred to him."

This memorial was signed by the Daimios of Kago, Hizen, Satsuma, Choshiu, Tosa, and some other Daimios of the west. But the real author of the memorial is believed to have been Kido, the brain of the Restoration.

Thus were the fiefs of the most powerful and most wealthy Daimios voluntarily offered to the Emperor. The other Daimios soon followed the example of their colleagues. And the feudalism which had existed in Japan for over eight centuries was abolished by the following laconic imperial decree of August, 1871:

"The clans are abolished, and prefectures are established in their places."

This rather off-hand way of destroying an institution, whose overthrow in Europe required the combined efforts of ambitious kings and emperors, of free cities, of zealous religious sects, and cost centuries of bloodshed, has been made a matter of much comment in the West. One writer exclaims, "History does not record another instance where changes of such magnitude ever occurred within so short a time, and it is astonishing that it only required eleven words to destroy the ambition and power of a proud nobility that had with imperious will directed the destiny of Japan for more than five hundred years." [1]

But when we examine closely the circumstances which led to the overthrow of feudalism and the influences which acted upon it, we cannot but regard it as the natural terminus of the political flood which was sweeping over the country. When such a revolution of thought as that expressed in the proclamation of 1868 had taken place in the minds of the leaders of society, when contact with foreigners had fostered the necessity of national union, when the spirit of loyalty of the Samurai had changed to loyalty to his Emperor, when his patriotic devotion to his province had changed to patriotic devotion to his country, then it became apparent that the petty social organization, which was antagonistic to these national principles, would soon be crushed.

If there is any form of society which is diametrically opposed to the spirit of national union, of liberal thought, of free intercourse, it is feudal society. A monarchical or a democratic society encourages the spirit of union, but feudal society must, from its very nature, smother it. Seclusion is the parent of feudalism. In our enlightened and progressive century seclusion is no longer possible. Steam and electricity alone would have been sufficient to destroy our Japanese feudalism. But long before its fall our Japanese feudalism "was an empty shell." Its leaders, the Daimios of provinces, were, with a few exceptions, men of no commanding

[1] Consular Report of the U. S. A., No. 75, p. 626.

importance. "The real power in each clan lay in the hands of able men of inferior rank, who ruled their masters." From these men came the present advisers of the Emperor. Their chief object at that time was the thorough unification of Japan. Why, then, should they longer trouble themselves to uphold feudalism, this mother of sectionalism, this colossal sham?

CHAPTER IV.

Influences that shaped the Growth of the Representative Idea of Government.

We have seen in the last two chapters how the Shogunate and feudalism fell, and how the Meiji government was inaugurated. We have also observed in the memorials of leading statesmen abundant proof of their willingness and zeal to introduce a representative system of government. We have also seen the Kogisho convened and dissolved.

John Stuart Mill has pointed out, in his Representative Government, several social conditions when representative government is inapplicable or unsuitable:

1. When the people are not willing to receive it.

2. When the people are not willing and able to do what is necessary for its preservation.

"Representative institutions necessarily depend for permanence upon the readiness of the people to fight for them in case of their being endangered."

3. When the people are not willing and able to fulfil the duties and discharge the functions which it imposes on them.

4. When the people have not learned the first lesson of obedience.

5. When the people are too passive; when they are ready to submit to tyranny.

Now when we look at the Japan of 1871, even her greatest admirers must admit that she was far from being able to fulfil the social conditions necessary for the success of representative government. Japan was obedient, but too submissive. She had not yet learned the first lesson of freedom, that is, when and how to resist, in the faith that resistance to tyrants is obedience to truth; that the irrepressible kicker

against tyranny, as Dr. Wilson observes, is the only true freeman. In her conservative, almost abject submission, Japan was yet unfit for free government. The Japanese people were willing to do almost anything suggested by their Emperor, but they had first to learn what was meant by representative government, "to understand its processes and requirements." The Japanese had to discard many old habits and prejudices, reform many defects of national character, and undergo many stages of moral and mental discipline before they could acclimatize themselves to the free atmosphere of representative institutions. This preparation required a period of little over two decades, and was effected not only through political discipline, but by corresponding development in the moral, intellectual, social, and industrial life of the nation.

I remarked in the beginning that the political activity of a nation is not isolated from other spheres of its activities, but that there is a mutual interchange of action and reaction among the different factors of social life, so that to trace the political life of a nation it is not only necessary to describe the organ through which it acts, the governmental machinery, and the methods by which it is worked, but to know "the forces which move it and direct its course." Now these forces are political as well as non-political. This truth is now generally acknowledged by constitutional writers. Thus, the English author of "The American Commonwealth" devotes over one-third of his second volume to the account of non-political institutions, and says "there are certain non-political institutions, certain aspects of society, certain intellectual or spiritual forces which count for so much in the total life of the country, in the total impression it makes and the hopes for the future which it raises, that they cannot be left unnoticed."[1]

If this be the case in the study of the American commonwealth, it is more so in that of Japanese politics. For

[1] The American Commonwealth, Bryce, Vol. I., p. 7.

nowhere else in the history of nations do we see "non-political institutions" exerting such a powerful influence upon the body politic as in New Japan. In this chapter we shall therefore note briefly the growth of so-called "non-political institutions" during a period of about a decade and a half, between 1868 and 1881, and mark their influence upon the development of representative ideas.

I.—Means of Communication.

1. *Telegraph.* At the time of the Restoration there was no telegraph in operation, and "for expresses the only available means were men and horses." In 1868 the government began to construct telegraphs, and the report of the Bureau of Statistics in 1881 shows the following increase in each successive year:

Year.	Telegraph Offices.	Miles. Ri Cho.	Number of Telegrams.
1869–1871	8	26.04	19,448
1872	29	33.11	80,639
1873	40	1,099.00	186,448
1874	57	1,333.20	356,539
1875	94	1,904.32	611,866
1876	100	2,214.07	680,939
1877	122	2,827.08	1,045,442
1878	147	3,380.05	1,272,756
1879	195	3,842.31	1,935,320
1880	195	4,484.30	2,168,201

All the more important towns in the country were thus made able to communicate with one another as early as 1880.

In 1879 Japan joined the International Telegraph Convention, and since then she can communicate easily with the great powers of the world through the great submarine cable system. "Compared with the state of ten years ago, when the ignorant people cut down the telegraph poles and severed

the wires," exclaims Count Okuma, "we seem rather to have made a century's advance."

2. *Postal System.* "Previous to the Restoration," to quote further from Count Okuma, "with the exception of the posts sent by the Daimios from their residences at the capital to their territories, there was no regularly established post for the general public and private convenience. Letters had to be sent by any opportunity that occurred, and a single letter cost over 25 sen for a distance of 150 ri. But since the Restoration the government for the first time established a general postal service, and in 1879 the length of postal lines was 15,700 ri (nearly 40,000 English miles), and a letter can at any time be sent for two sen to any part of the country. In 1874 we entered the International Postal Convention, and have thus obtained great facilities for communicating with foreign countries."[1]

3. *Railroad.* The first railway Japan ever saw was the model railway constructed by Commodore Perry to excite the curiosity of the people. But it was not until 1870 that the railroad was really introduced into Japan. The first rail was laid on the road between Tokio and Yokohama. This road was opened in 1872. It is 18 miles long. The second line was constructed in 1876, and runs between Hiogo and Kioto via Osako. And the year 1880 saw the opening of the railroad between Kioto and Otsu. This line between Hiogo and Otsu is 58 miles long. So at the end of the period which we are surveying Japan had a railway system of 31 ri and 5 cho (about 78 English miles).

This was nothing but a child-play compared with the railroad activity which the later years brought forth, for now we have a railway system extending over one thousand two hundred miles. But this concerns the later period, so we shall not dwell upon it at present.

4. *Steamers and the coasting trade.* In 1871 the number of

[1] A Survey of Financial Policy during Thirteen Years (1868–1880), by Count Okuma.

ships of foreign build was only 74, but by 1878 they had reached 377. The number of vessels of native build in 1876 was 450,000, and in 1878 had reached 460,000.[1]

"Since the Restoration the use of steamers has daily increased, and the inland sea, the lakes and large rivers are now constantly navigated by small steamers employed in the carrying trade."[1]

With the increased facility of communication, commerce and trade were stimulated. In 1869 the total amount of imports and exports was 33,680,000 yen, and in 1879 64,120,000 yen. Imports had grown from 20,780,000 yen to 36,290,000 yen, and exports from 12,909,000 yen to 27,830,000 yen; in the one case showing an advance from 2 to 3½, in the other from 2 to 5.[1]

II.—Educational Institutions.

Previous to the Restoration, the schools supported by Daimios and the private schools were few in number; but since that epoch the educational system has been vastly improved, with a resulting increase in the number of schools and pupils. In 1878, of high, middle, and primary schools there were altogether 27,600, with 68,000 teachers and 2,319,000 pupils.[1] The following table shows the comparative history of educational institutions within three years, 1878–1880 (inclusive):

		Teachers.		Pupils.	
Year.	Institutions.	Male.	Female.	Male.	Female.
1878	27,672	66,309	2,374	1,715,425	610,214
1879	29,362	71,757	2,803	1,771,641	608,205
1880	30,799	74,747	2,923	1,844,564	605,781

Furthermore, hundreds of students went abroad yearly, and returning, powerfully influenced the destiny of their country.

[1] Count Okuma's pamphlet.

III.—Newspapers.

It was in 1869 that the Emperor sanctioned the publication of newspapers. Magazines, journals, periodicals and newspapers sprung up in a night. The number of newspapers published in 1882 was about 113, and of miscellaneous publications about 133. It is to be noted that the newspapers defied the old censorship of prohibition under very sanguinary pains and penalties. Their circulation increased every year. The total newspaper circulation in 1874 was but 8,470,269, while in 1877 it was 33,449,529. In his consular report of 1882, Consul-General Van Buren makes an approximate estimate of the annual aggregate circulation of a dozen noted papers of Tokio to be not less than 29,000,000 copies.[1]

The publication of books and translations kept pace with the growth of newspapers. Observing the effects of these literary activities, Mr. Griffis well says: "It is the writer's firm belief, after nearly four years of life in Japan, mingling among the progressive men of the empire, that the reading and study of books printed in the Japanese language have done more to transform the Japanese mind and to develop an impulse in the direction of modern civilization than any other cause or series of causes."

Meanwhile, great changes were affecting law and religion. Here it is sufficient to observe that the old law which had been hitherto altogether arbitrary—either the will of the Emperor or of the Shogun—was revised on the model of the Napoleonic code and soon published throughout the land. The use of torture to obtain testimony was wholly and forever abolished.

With the incoming of Western science and Christianity, old faiths began to lose their hold upon the people. The new religion spread yearly. Missionary schools were instituted in several parts of the country. Christian churches were

[1] Consular Report of the U. S., No. 25, p. 182.

built in almost all of the large cities and towns, and their number increased constantly. Missionaries and Christian schools had no inconsiderable influence in changing the ideas of the people.

Such, in brief, have been the changes in the industrial, social and religious condition of Japan from 1868 to 1881. After this study we shall not much wonder at the remarkable political change of Japan during the same period, which I shall endeavor to describe in the next chapter.

CHAPTER V.

Progress of the Constitutional Movement from the Abolition of Feudalism to the Proclamation of October 12, 1881.

The leaders of the Restoration were of an entirely different type from the court nobles of former days. They were, with a few exceptions, men of humble origin. They had raised themselves from obscurity to the highest places of the state by sheer force of native ability. They had studied much and travelled far. Their experiences were diverse; they had seen almost every phase of society. If they were now drinking the cup of glory, most of them had also tasted the bitterness of exile, imprisonment, and fear of death. Patriotic, sagacious, and daring, they combined the rare qualities of magnanimity and urbanity. If they looked with indifference upon private morality, they were keenly sensitive to the feeling of honor and to public morals. If they made mistakes and did not escape the charge of inconsistency in their policy, these venial faults were, for the most part, due to the rapidly changing conditions of the country. No other set of statesmen of Japan or of any other country, ancient or modern, have witnessed within their lifetime so many social and political transformations. They saw the days when feudalism flourished —the grandeur of its rulers, its antique chivalry, its stately etiquette, its ceremonial costumes, its codes of honor, its rigid social order, formal politeness, and measured courtesies. They also saw the days when all these were swept away and replaced by the simplicity and stir of modern life. They accordingly "have had to cast away every tradition, every habit, and every principle and mode of action with which even the youngest of them had to begin official life."

The ranks of this noble body of statesmen and reformers are now, alas! gradually breaking. Saigo, the elder, is no

more. Kido and Iwakura have been borne to their graves. Okubo and Mori have fallen under the sword of fanatics. But, thanks to God, many of them yet remain and bear the burdens of the day.

I have mentioned in Chapter III. the overthrow of feudalism and its causes. Its immediate effect on the nation, in unifying their thoughts, customs, and habits, was most remarkable. From this time we see the marked growth of common sentiment, common manners, common interest among the people, together with a love of peace and order.

While the government at home was thus tearing down the old framework of state, the Iwakura Embassy in foreign lands was gathering materials for the new. This was significant, inasmuch as five of the best statesmen of the time, with their staff of forty-four able men, came into association for over a year with western peoples, and beheld in operation their social, political and religious institutions. These men became fully convinced that "the wealth, the power, and the happiness of a people," as President Grant told them, "are advanced by the encouragement of trade and commercial intercourse with other powers, by the elevation and dignity of labor, by the practical adaptation of science to the manufactures and the arts, by increased facilities of frequent and rapid communication between different parts of the country, by the encouragement of immigration, which brings with it the varied habits and diverse genius and industry of other lands, by a free press, by freedom of thought and of conscience, and a liberal toleration in matters of religion."[1]

The impressions and opinions of these men on the importance of a free and liberal policy can be gleaned from the speeches they made during the western tour, and some of their writings and utterances on other occasions.

The chief ambassador, Iwakura, in reply to a toast made to him in England, said: "Having now become more intimately acquainted with her (England's) many institutions, we

[1] C. Lanman, The Japanese in America, p. 33.

have discovered that their success is due to the *liberal* and energetic spirit by which they are animated."[1]

Count Ito, the present President of the Privy Council, in his speech at San Francisco, said: "While held in absolute obedience by despotic sovereigns through many thousand years, our people knew no freedom or liberty of thought. With our material improvement they learned to understand their rightful privileges, which for ages have been denied them."[2]

Count Inouye, the ex-Minister of State for Agriculture and Commerce, in his memorial to the government in 1873, said: "The people of European and American countries are for the most part rich in intelligence and knowledge, and they preserve the spirit of independence. And owing to the nature of their polity they share in the counsels of their government. Government and people thus mutually aid and support each other, as hand and foot protect the head and eye. The merits of each question that arises are distinctly comprehended by the nation at home, and the government is merely its outward representative. But our people are different. Accustomed for ages to despotic rule, they have remained content with their prejudices and ignorance. Their knowledge and intelligence are undeveloped and their spirit is feeble. In every movement of their being they submit to the will of the government, and have not the shadow of an idea of what 'a right' is. If the government makes an order, the whole country obeys it as one man. If the government takes a certain view, the whole nation adopts it unanimously. . . . The people must be recalled to life, and the Empire be made to comprehend with clearness that the objects which the government has in view are widely different from those of former times."[3]

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[1] Mossman's New Japan, p. 442.

[2] C. Lanman, The Japanese in America, p. 14.

[3] The translation of the whole memorial is given in C. Lanman's Leading Men of Japan, p. 87.

If the passages quoted illustrate statesmen's zeal to introduce western civilization, and to educate the people gradually to political freedom and privileges, their actions speak more eloquently than their words. In order to crush that social evil, the class system, which for ages had been a curse, the government declared all classes of men equal before the law, delivered the *eta*—the class of outcasts—from its position of contempt, abolished the marriage limitations existing between different classes of society, prohibited the wearing of swords, which was the peculiar privilege of the nobles and the Samurai; while to facilitate means of communication and to open the eyes of the people to the wonders of mechanical art, they incessantly applied themselves to the construction of railroads, docks, lighthouses, mining, iron, and copper factories, and to the establishment of telegraphic and postal systems. They also codified the laws, abolished the use of torture in obtaining testimony, revoked the edict against Christianity, sanctioned the publication of newspapers, established by the decree of 1875 the "Genro-in (a kind of Senate) to enact laws for the Empire, and the Daishin-in to consolidate the judicial authority of the courts,"[1] and called an assembly of the prefects, which, however, held but one session in Tokio.

While the current of thought among the official circles was thus flowing, there was also a stream, in the lower region of the social life, soon to swell into a mighty river. Social inequality, that barrier which prevents the flow of popular feeling, being already levelled, merchants, agriculturists, tradesmen, artisans and laborers were now set at liberty to assert their rights and to use their talents. They were no longer debarred from places of high honor.

The great colleges and schools, both public and private, which were hitherto established and carried on exclusively for the benefit of the nobles and the Samurai, were now open to all. And in this democracy of letters, where there is no rank or honor but that of talent and industry, a sentiment

[1] The Imperial decree of 1875.

was fast growing that the son of a Daimio is not necessarily wiser than the son of a peasant.

Teachers of these institutions were not slow to infuse the spirit of independence and liberty into their pupils and to instruct the people in their natural and political rights. Mr. Fukuzawa, a schoolmaster, an author, and a lecturer, the man who exercised an immense influence in shaping the mind of young Japan, gave a deathblow to the old ideas of despotic government, and of the blind obedience of the people, when he declared that *government exists for the people and not the people for the government*, that the government officials are the servants of the people, and the people their employer. He also struck a heavy blow at the arrogance and extreme love of military glory of the Samurai class, with whom to die for the cause of his sovereign, whatever that cause might be, was the highest act of patriotism, by advocating that "Death is a democrat, and that the Samurai who died fighting for his country, and the servant who was slain while caught stealing from his master, were alike dead and useless."

In a letter to one of his disciples, Mr. Fukuzawa said: "The liberty of which I have spoken is of such great importance that everything should be done to secure its blessings in the family and in the nation, without any respect to persons. When every individual, every family and every province shall obtain this liberty, then, and not till then, can we expect to witness the true independence of the nation; then the military, the farming, the mechanical, and mercantile classes will not live in hostility to each other; then peace will reign throughout the land, and all men will be respected according to their conduct and real character."[1]

The extent of the influence exercised with pen and tongue by these teachers upon the nation showed that the reign of sword and brutal force was over and the day of peace and reason had dawned. The press has at last become a power.

[1] The translation given in C. Lanman, Leading Men of Japan, p. 47.

The increase during that period of publications, both original and translations, and of newspapers, both in their number and circulation, is marvellous. To give an illustration, the number of newspapers transmitted in the mails increased from 514,610 in the year 1873 to 2,629,648 in the year 1874 —an increase of 411 per cent in one year—"a fact which speaks volumes for the progress of civilization."[1]

These newspapers were soon to become the organs of political parties which were in the process of formation. The most prominent among these political societies was the *Ri-shi-sha*, which finally developed into the present Liberal party. At the head of this party was Count Itagaki, a man of noble character and of marked ability, who had rendered many useful services to the country in the time of the Restoration and had for some years been a member of the cabinet, but who in 1875 resigned his office and became "the man of the people." He and his party contributed greatly to the development of constitutional ideas. Whatever may be said as to the extreme radicalism and childish freaks of the rude elements of this party, the presence of its sober members, who sincerely longed to see the adoption of a constitutional form of government and used only proper and peaceful means for the furtherance of their aim, and boldly and frankly told what they deemed the defects of the government; the presence of such a party in the country, whose masses knew nothing but slavish obedience to every act of the government, was certainly a source of great benefit to the nation at large.

In 1873, Count Itagaki with his friends had sent in a memorial to the government praying for the establishment of a representative assembly, but they had not been heeded by the government. In July, 1877, Count Itagaki with his Ri-shi-sha again addressed a memorial to the Emperor, "praying for a change in the form of government, and setting forth the reasons which, in the opinion of the members of the society, rendered such a change necessary."

[1] See the Appendix of Griffis' The Mikado's Empire.

These reasons were nine in number and were developed at great length. Eight of them formed a direct impeachment of the present government, and the ninth was a reminder that the solemn promise of 1868 had never been fulfilled. "Nothing," they conclude, "could more tend to the well-being of the country than for your Majesty to put an end to all despotic and oppressive measures, and to consult public opinion in the conduct of the government. To this end a representative assembly should be established, so that the government may become constitutional in form. The people would then become more interested and zealous in looking after the affairs of the country; public opinion would find expression, and despotism and confusion cease. The nation would advance in civilization; wealth would accumulate in the country; troubles from within and contempt from without would cease, and the happiness of your Imperial Majesty and of your Majesty's subjects would be secured."

But again the government heeded not, its attention at the time being fully occupied with the suppression of the Satsuma Rebellion. The civil war being ended, in 1878, the year which marked a decade from the establishment of the new régime, the government, persuaded that the time for popular institutions was fast approaching, not alone through representations of the Tosa memorialists, but through many other signs of the times, decided to take a step in the direction of establishing a national assembly. But the government acted cautiously. Thinking that to bring together hundreds of members unaccustomed to parliamentary debate and its excitement, and to allow them a hand in the administration of affairs of the state, might be attended with serious dangers, as a preparation for the national assembly the government established first local assemblies. Certainly this was a wise course.

These local assemblies have not only been good training schools for popular government, but also proved reasonably successful. They hold their sessions every year, in the

month of March, in their respective electoral districts, and there discuss all questions of local taxation. They may also petition the central government on other matters of local interest. The members must be males of the full age of twenty-five years, who have been resident for three years in the district and pay the sum of $10 as a land tax within their district. The qualifications for electors (males only) are: an age of twenty years, registration, and payment of a land tax of $5. Voting is by ballot, but the names of the voters are to be written by themselves on the voting papers. There are now 2172 members who sit in these local assemblies, and it was from the more experienced members of these assemblies that the majority of the members of the House of Representatives of the Imperial Diet, convened for the first time last year, were chosen.

The gulf between absolute government and popular government was thus widened more and more by the institution of local government. The popular tide raised by these local assemblies was swelling in volume year by year. New waves were set in motion by the younger generation of thinkers. Toward the close of the year 1881 the flood rose so high that the government thought it wise not to resist longer. His Imperial Majesty hearing the petitions of the people, graciously confirmed and expanded his promise of 1868 by the famous proclamation of October 12, 1881:

"We have long had it in view to gradually establish a constitutional form of government. . . . . It was with this object in view that in the eighth year of Meiji (1875) we established the Senate, and in the eleventh year of Meiji (1878) authorized the formation of local assemblies. . . . . We therefore hereby declare that we shall, in the twenty-third year of Meiji (1890) establish a parliament, in order to carry into full effect the determination we have announced; and we charge our faithful subjects bearing our commissions to make, in the meantime, all necessary preparations to that end."

X

HISTORY OF LIBERIA

JOHNS HOPKINS UNIVERSITY STUDIES
IN
HISTORICAL AND POLITICAL SCIENCE

HERBERT B. ADAMS, Editor

History is past Politics and Politics present History—*Freeman*

NINTH SERIES

X

HISTORY OF LIBERIA

BY J. H. T. McPHERSON, PH. D.

Fellow in History, Johns Hopkins University, 1889; *Instructor in History, University of Michigan*, 1890; *Professor of History and Politics, University of Georgia*, 1891.

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CONTENTS.

		Page.
I.	Introduction	9
II.	The Colonization Idea	14
III.	The Colonization Movement	20
IV.	Maryland in Liberia	31
V.	The Republic of Liberia	37
VI.	The Historic Significance of Colonization	52
	1. As a Southern Movement toward Emancipation	52
	2. As a Check to the Slave Trade	55
	3. As a Step toward the Civilization of Africa	56
	4. As a Missionary Effort	58
	5. As a Refuge to the Negro from the Pressure of Increasing Competition in America	59
Authorities		63

PREFATORY NOTE.

This paper claims to be scarcely more than a brief sketch. It is an abridgment of a History of Liberia in much greater detail, presented as a dissertation for the degree of Doctor of Philosophy at the Johns Hopkins University. I have devoted the leisure hours of several years to the accumulation of materials, which I hope will prove the basis of a larger work in the future.

J. H. T. McP.

University of Michigan,
June, 1891.

HISTORY OF LIBERIA.

I.

Introduction.

There are but few more interesting spots in Africa than the little corner of the west coast occupied by the Republic of Liberia. It has been the scene of a series of experiments absolutely unique in history—experiments from which we are to derive the knowledge upon which we must rely in the solution of the weighty problems connected with the development of a dark continent, and with the civilization of hundreds of millions of the human race. Many questions have arisen which have not been settled to our complete satisfaction. Is the Negro capable of receiving and maintaining a superimposed civilization? Froude declares that "the worst enemies of the blacks are those who persist in pressing upon them an equality which nature has denied them. They may attain it in time if they are fairly treated, but they can attain it only on condition of going through the discipline and experience of hundreds of years, through which the white race had to pass before it was fit for political rights. If they are raised to a position for which they are unqualified, they can only fall back into a state of savagery."[1] Upon the truth or error of

[1] Letter to Philip A. Bruce, dated London, April 8, 1889.

this view how much depends! It is shared by many; some even believe that the condition of Liberia tends to confirm it, thinking they discern signs of incipient decay. But the great preponderance of opinion is on the other side. The weight of evidence shows the colonists have at the lowest estimate retained the civilization they took with them. Many maintain that there has been a sensible advance. A recent traveller describes them as "in mancher Hinsicht schon hypercultivirt."

What might be called a third position is taken by one of the most prominent writers of the race, E. W. Blyden, the widely-known President of Liberia College. The radical difference in race and circumstance must, he thinks, make African civilization essentially different from European: not inferior, but different. The culture which the blacks have acquired, or may attain in further contact with foreign influence, will be used as a point of departure in future intelligent development along lines following the characteristics of the race. This tendency to differentiate he regards as natural and inevitable; it ought to be recognized and encouraged in every way, that the time may be hastened when a great negro civilization, unlike anything we have yet seen, shall prevail in Africa and play its part in the world's history.

If we make allowance for the errors and mistakes of an untrained and inexperienced people, the history of Liberia may be regarded as a demonstration of the capacity of the race for self-government. Upon the capability of individuals is reflected the highest credit. The opportunities for a rounded-out and fully developed culture afforded by the peculiar conditions of life in the Republic produced a number of men who deserve unqualified admiration. From the earliest days of the colony, when Elijah Johnson upheld the courage of the little band in the midst of hostile swarms of savages, to the steadfast statesmanship of Russwurm and the stately diplomacy of Roberts, there have stood forth individuals of a quality and calibre that fill with surprise those who hold the ordinary opinion of the possibilities of the Negro. The trials

of the Republic have afforded a crucial test in which many a character has shown true metal. It is not too much to assert that the very highest type of the race has been the product of Liberia.

There are other aspects in which our tropical offspring has for us a vital interest. Perhaps the most important is the connection it will have in the future with what is called the Negro Problem in our own country. There have been and are thoughtful men who see in colonization the only solution of its difficulties. Others ridicule the very suggestion. It is a question into which we do not propose to go. But there is scarcely any doubt that when the development of Liberia is a little more advanced, and when communication with her ports becomes less difficult, and when the population of the United States grows more dense and presses more upon the limits of production, there will be a large voluntary migration of negroes to Africa. And no one will deny that the existence of a flourishing Republic of the black race just across the Atlantic will react powerfully upon all questions relating to our own colored population.

But let us not venture too deeply into this theme. Another claim of Liberia upon the sympathetic interest of the entire people, is that it represents our sole attempt at colonial enterprise. It is true the movement was largely individual, but the effort came from a widespread area of the country ; moreover, the part played by the National Government was not only important, but essential. Without its friendly intervention, the plan could never have been carried out. The action carries with it some responsibility. The United States might well exercise some protective care, might now and then extend a helping hand, and let the aggressive Powers of Europe see that Liberia is not friendless, and that encroachment upon her territory will not be tolerated.

A few words upon the topography of the country and upon the aborigines may not be out of place. Liberia is by no means the dreary waste of sand and swamp that some imagine

it. The view from the sea has been described as one of unspeakable beauty and grandeur. From the low-lying coast the land rises in a terraced slope—a succession of hills and plateaux as far as the eye can reach, all covered with the dense perennial verdure of the primeval forest. Perhaps the best authority on the natural features of the country is the zoölogist of the Royal Museum of Leyden, J. Büttikofer, who has made Liberia several visits and spent several years in its scientific exploration. The account of his investigations is most interesting. Small as is the area of the country all kinds of soil are represented, and corresponding to this variety is a remarkably rich and varied flora. Amidst this luxuriance is found an unusually large number of products of commercial value. Cotton, indigo, coffee, pepper, the pineapple, gum tree, oil palm, and many others grow wild in abundance, while a little cultivation produces ample crops of rice, corn, potatoes, yams, arrowroot, ginger, and especially sugar, tobacco, and a very superior grade of coffee. The fertility of the soil renders possible the production of almost any crop.

The fauna of the land is scarcely less remarkable in variety and abundance. The larger animals, including domestic cattle and horses, do not thrive on the coast, but are plentiful farther inland. On the Mandingo Plateau, elephants are not uncommon. Buffaloes, leopards, tigers, antelopes, porcupines, the great ant-eater, divers species of monkeys, and numerous other animals are found, besides many varieties of birds.

The native Africans inhabiting this territory are probably more than a million in number, and belong to several different stocks of somewhat varying characteristics. The most common type is of medium size, well formed, coal-black in color and rather good-looking. They are intelligent and easily taught, but are extremely indolent. Their paganism takes the form of gross superstition, as seen in their constant use of gree-gree charms and in their sassa-wood ordeal. Like all the races of Africa, they are polygamists; and as the women manage the farms and do nearly all the work, a man's wealth and import-

ance are often estimated by the number of his wives. Domestic slavery is universal among them, the great majority of slaves being obtained by capture in war. These inter-tribal wars were once almost constant, and their prevention requires the utmost vigilance of the Liberian authorities.

The natives harvest rice and cassada; supply the coasting trader's demand for palm-oil; raise tobacco; procure salt by evaporating sea-water; engage in hunting and fishing. They carry on a number of rude industries such as the manufacture of basket-work, hats, mats, fish-nets; a crude sort of spinning and weaving. Iron ore exists in abundance, and the natives have long known how to smelt it and obtain the metal, from which they manufacture rude weapons, spurs, bits, stirrups and kitchen utensils. The cheapness of imported iron ware has driven out this interesting art on the coast; but in the interior it is still practised by the Mandingoes, who are also fine goldsmiths, and manufacture highly ornamented rings. There are also silversmiths among the Veys, who do good work. The leather industry, too, has been carried to some perfection.

With all their disadvantages the natives seem to extract a good deal of enjoyment out of existence. They are very fond of singing and dancing to the rude strains of a drum and harp, and usually prolong their revelries far into the night.

Taken as a whole, the native character has many fine traits; and from the civilization and development of this part of her population, Liberia has much to hope.

II.

The Colonization Idea.

It is always a most interesting part of historic inquiry to search out the very earliest sources, the first feeble germ of the idea whose development we are investigating. It is difficult to decide from what one origin can be traced the continuous development of the idea which resulted in the birth of Liberia; but toward the close of the last century there arose a number of projects, widely differing in object and detail, which bore more or less directly upon it, each of which may be said to have contributed some special feature to the fully rounded and developed plan.

The earliest of these sprang from the once notorious hot-bed of slavery—Newport, R. I. As early as 1773 the Rev. Samuel Hopkins, then widely known as a theological writer, and responsible for the system termed Hopkinsianism, conceived the idea of a missionary effort in Africa, undertaken by natives properly trained in the United States.[1] This at first did not include the conception of a permanent settlement; but on consultation with the Rev. Ezra Styles, afterward President of Yale, it developed into a definite plan for a colony. The scheme proved popular; it was widely advertised by sermons and circulars both in this and the mother country; and by 1776 funds had been collected, Negro students placed under suitable instruction at Princeton, and success seemed almost assured. The outbreak of the Revolution, however, swept

[1] James Ferguson, *Life of Hopkins.* Hopkins' Circular, 1793.

away all the thought of carrying Hopkins' cherished enterprise into execution, and after peace was restored his most strenuous efforts failed to arouse the old interest. Later thinkers, however, found suggestion and encouragement in his labors.

The colony founded at Sierra Leone by English philanthropists drew in part its inspiration from Hopkins' idea, and in turn suggested later American plans. After the celebrated decision of Lord Mansfield in the Somerset case (1772), many slaves escaped to England, where they congregated in the dens of London in helpless poverty and misery. James Ramsay's essay on Slavery soon turned public attention to the Negro, and Dr. Smeathman's letters suggested quite a scheme of colonization. A movement in behalf of the oppressed race asserted itself at the University of Cambridge, in which Clarkson, Wilberforce, Granville Sharp and others took part. As a result of these efforts some four hundred Negroes and sixty whites were landed at Sierra Leone in May, 1787. Disease and disorder were rife, and by 1791 a mere handful survived. The Sierra Leone Company was then incorporated; some 1,200 colonists from the Bahamas and Nova Scotia were taken over, and the settlement in spite of discouraging results was kept up by frequent reinforcements until 1807, when it was made a Government colony and naval station. Its growth in population and commerce has since steadily increased, and it now numbers some 60,000 persons chiefly concentrated in the city of Freetown, and all blacks save one or two hundred.

It may be as well to mention here two other sporadic attempts to lead colored colonists to Africa. In 1787 the gifted and erratic Dr. Wm. Thornton proposed himself to become the leader of a body of Rhode Island and Massachusetts colonists to Western Africa; he appears to have been in communication with Hopkins on the subject a year later, but the effort fell through for want of funds. The other is much later. Paul Cuffee, the son of a well-to-do Massachusetts freedman, had become by his talents and industry a prosperous merchant and ship-owner. Stimulated by the colony at Sierra

Leone, and longing to secure liberty to his oppressed race, he determined to transport in his own vessels, and at his own expense, as many as he could of his colored brethren. Accordingly, in 1815, he sailed from Boston with about forty, whom he landed safely at Sierra Leone. He was about to take over on a second voyage a much larger number, when his benevolent designs were interrupted by death.

It will be observed that the colonization plans hitherto unfolded had all been proposed for some missionary or similar benevolent object, and were to be carried out on a small scale and by private means. It is now time to consider one proposed from a widely different standpoint. As a political measure, as a possible remedy for the serious evils arising from slavery and the contact of races, it is not surprising to find Thomas Jefferson suggesting a plan of colonization. The evils of slavery none ever saw more clearly. "The whole commerce between master and slave," he quaintly says, "is a perpetual exercise of the most boisterous passions, the most unremitting despotism on the one part, and degrading submissions on the other. Our children see this and learn to imitate it." And again, "With what execration should the statesman be loaded, who, permitting one-half the citizens thus to trample on the rights of the other, transforms these into despots and those into enemies, destroys the morals of the one part, and the amor patriae of the other. . . . I tremble for my country when I reflect that God is just."[1] Yet his equally clear perception of the evils sure to result from emancipation immediate and unqualified, makes him look to colonization as the only remedy. "Why not retain and incorporate the blacks into the state?" he asks, "Deep rooted prejudices entertained by the whites, ten thousand recollections by the blacks of the injuries they have sustained; new provocations; the real distinctions which nature has made; and many other circumstances, will divide us into parties and produce convulsions which will probably never end but in the extermination of the

[1] Jefferson, *Notes on Virginia.*

one or the other race." After the lapse of a century how prophetic these words sound! Jefferson believed then that by colonization slavery was to be abolished. All slaves born after a certain date were to be free; these should remain with their parents till a given age, after which they should be taught at public expense agriculture and the useful arts. When full-grown they were to be "colonized to such a place as the circumstances of the time should render most proper, sending them out with arms, implements of the household and handicraft arts, pairs of the useful domestic animals, etc.; to declare them a free and independent people, and extend to them our alliance and protection till they have acquired strength."

Such in outline was Jefferson's contribution to the colonization idea. Its influence was unquestionably great: the "Notes on Virginia," privately circulated after 1781, and at length published in 1787, went through eight editions before 1800, and must have been familiar to nearly all of those concerned in the formation of the Colonization Society.

Clearer still must the details of Jefferson's project have been in the minds of the members of the Virginia Legislature in 1800, when, after the outbreak of a dangerous slave conspiracy in Richmond, they met in secret session to consult the common security. The resolution which they reached shows unmistakably Jefferson's influence. With the delicate if somewhat obscure periphrasis in which legislation concerning the Negro was traditionally couched, they enacted: "That the Governor be requested to correspond with the President of the United States on the subject of purchasing lands without the limits of this State whither persons obnoxious to the laws or dangerous to the peace of society may be removed."[1] An interesting correspondence ensued between Monroe, who was then Governor, and Jefferson. Both regarded the idea as something far more important than a mere penal colony. Monroe, too, saw in it a possible remedy for the evils of

[1] Kennedy's *Report*, p. 160.

slavery, and refers to the matter as "one of great delicacy and importance, involving in a peculiar degree the future peace, tranquillity, and happiness" of the country. After much discussion Africa was selected as the only appropriate site, and approved by another Act of the Legislature. Jefferson lost no time in attempting to secure land for the colony, but his efforts met with no success. After a discouraging repulse from Sierra Leone, and the failure of several half-hearted attempts to obtain a footing elsewhere, the whole matter was allowed to sink into abeyance. For years a pall of secrecy concealed the scheme from public knowledge.

In the meantime a new private movement toward colonization was started at the North. Samuel J. Mills organized at Williams College, in 1808, for missionary work, an undergraduate society, which was soon transferred to Andover, and resulted in the establishment of the American Bible Society and Board of Foreign Missions. But the topic which engrossed Mills' most enthusiastic attention was the Negro. The desire was to better his condition by founding a colony between the Ohio and the Lakes; or later, when this was seen to be unwise, in Africa. On going to New Jersey to continue his theological studies, Mills succeeded in interesting the Presbyterian clergy of that State in his project. Of this body one of the most prominent members was Dr. Robert Finley. Dr. Finley succeeded in assembling at Princeton the first meeting ever called to consider the project of sending Negro colonists to Africa. Although supported by few save members of the seminary, Dr. Finley felt encouraged to set out for Washington in December, 1816, to attempt the formation of a colonization society.

Earlier in this same year there had been a sudden awakening of Southern interest in colonization. Toward the end of February, Gen. Charles Fenton Mercer accidentally had his attention called to the Secret Journals of the Legislature for the years 1801–5.[1] He had been for six years a member of the

[1] A. C. S. Report for 1853, pp. 37–55.

House of Delegates, in total ignorance of their existence. He at once investigated and was rewarded with a full knowledge of the Resolutions and ensuing correspondence between Monroe and Jefferson. Mercer's enthusiasm was at once aroused, and he determined to revive the Resolutions at the next meeting of the Legislature. In the meantime, imputing their previous failure to the secrecy which had screened them from public view, he brought the whole project conspicuously into notice. At the next session of the Legislature, in December, resolutions embodying the substance of the secret enactments were passed almost unanimously in both houses. Public attention had been in this way already brought to bear upon the advantages of Colonization when Finley set on foot the formation of a society in Washington. The interest already awakened and the indefatigable efforts of Finley and his friend Col. Charles Marsh, at length succeeded in convening the assembly to which the Colonization Society owes its existence. It was a notable gathering. Henry Clay, in the absence of Bushrod Washington, presided, setting forth in glowing terms the object and aspirations of the meeting. Finley's brother-in-law, Elias B. Caldwell was Secretary, and supplied the leading argument, an elaborate plea, setting forth the expediency of the project and its practicability in regard to territory, expense, and the abundance of willing colonists. The wide benevolent objects to be attained were emphasized. John Randolph of Roanoke, and Robert Wright of Maryland, dwelt upon the desirability of removing the turbulent free-negro element and enhancing the value of property in slaves.[1] Resolutions organizing the Society passed, and committees appointed to draft a Constitution and present a memorial to Congress. At an adjourned meeting a week later the constitution was adopted, and on January 1, 1817, officers were elected.

[1] The remarks of these gentlemen and others of similar views have subjected the Society to many unjust attacks. Of course many would join such a movement from mixed motives; but the guiding principles of the Society itself have always been distinctly philanthropic.

III.

The Colonization Movement.

With commendable energy the newly organized Society set about the accomplishment of the task before it. Plans were discussed during the summer, and in November two agents, Samuel J. Mills and Ebenezer Burgess, sailed for Africa to explore the western coast and select a suitable spot. They were cordially received in England by the officers of the African Institution, and by Earl Bathurst, Secretary of State for the Colonies, who provided them with letters to Sierra Leone. Here they arrived in March, 1818, and were hospitably received, every facility being afforded them to prosecute their inquiries, though marked unwillingness to have a foreign colony established in the vicinity was not concealed. Their inspection was carried as far south as Sherbro Island, where they obtained promises from the natives to sell land to the colonists on their arrival with goods to pay for it. In May they embarked on the return voyage. Mills died before reaching home. His colleague made a most favorable report of the locality selected, though, as the event proved, it was a most unfortunate one.

After defraying the expenses of this exploration the Society's treasury was practically empty. It would have been most difficult to raise the large sum necessary to equip and send out a body of emigrants; and the whole enterprise would have languished and perhaps died but for a new impelling force. Monroe, who ever since his correspondence with Jefferson in 1800, had pondered over "the vast and interesting

objects" which colonization might accomplish, was now by an interesting chain of circumstances enabled to render essential aid.

Though the importation of slaves had been strictly prohibited by the Act of Congress of March 2, 1807, no provision had been made for the care of the unfortunates smuggled in in defiance of the Statute. They became subject to the laws of the State in which they were landed; and these laws were in some cases so devised that it was profitable for the dealer to land his cargo and incur the penalty. The advertisements of the sale of such a cargo of "recaptured Africans" by the State of Georgia drew the attention of the Society and of Gen. Mercer in particular to this inconsistent and abnormal state of affairs. His profound indignation shows forth in the Second Annual Report of the Society, in which the attention of the public is earnestly drawn to the question; nor did he rest until a bill was introduced into the House of Representatives designed to do away with the evil. This bill became a law on March 3, 1819.

Provision was made for a more stringent suppression of the slave trade: new cruisers were ordered and bounties awarded for captures; but the clause which proved so important to the embryo colony was that dealing with the captured cargoes:

"The President of the United States is hereby authorized to make such regulations and arrangements as he may deem expedient for the safe-keeping, support, and removal beyond the limits of the United States, of all such negroes, mulattoes, or persons of color as may be so delivered and brought within their jurisdiction; and to appoint a proper person or persons residing upon the coast of Africa as agent or agents for receiving the negroes, mulattoes, or persons of color, delivered from on board vessels seized in the prosecution of the slave trade by commanders of the United States armed vessels." The sum of $100,000 was appropriated for carrying out the provisions of the Act. President Monroe determined to construe it as broadly as possible in aid of the project of coloniza-

tion. After giving Congress, in his message, December 20, 1818, fair notice of his intention, no objection being made, he proceeded to appoint two agents, the Rev. Samuel Bacon, already in the service of the Colonization Society, and John P. Bankson as assistant, and to charter the ship Elizabeth. The agents were instructed to settle on the coast of Africa, with a tacit understanding that the place should be that selected by the Colonization Society; they were to provide accommodations sufficient for three hundred, supplying provisions, clothing, tools, and implements. It is important to note the essential part taken by the Government in the establishment of the colony, for this is often said to be purely the result of private enterprise; the inference tending to free the United States from any responsibility for the protection of its feeble offspring. It is true according to the letter, that the Government agency was separate from the colony: the agents were instructed "to exercise no power founded on the principle of colonization, or other principle than that of performing benevolent offices;" and again, "you are not to connect your agency with the views or plans of the Colonization Society, with which, under the law, the Government of the United States has no concern." Yet as a matter of fact the agency and colony were practically identical; and for years the resources of the Government were employed "to colonize recaptured Africans, to build homes for them, to furnish them with farming utensils, to pay instructors to teach them, to purchase ships for their convenience, to build forts for their protection, to supply them with arms and munitions of war, to enlist troops to guard them, and to employ the army and navy in their defence."[1] These words of one unfriendly to the colony forcibly show the extent to which our national government was responsible for the experiment.

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[1] Report of Amos Kendall, Fourth Auditor, to the Secretary of the Navy, August, 1830.

When the Elizabeth was chartered the Society was notified that the Government agency was prepared to transport their first colonists; or more literally "agreed to receive on board such free blacks recommended by the Society as might be required for the purpose of the agency." For the expenses of the expedition $33,000 was placed in the hands of Mr. Bacon. Dr. Samuel A. Crozier was appointed by the Society as its agent and representative; and eighty-six negroes from various states—thirty-three men, eighteen women, and the rest children, were embarked. On the 6th of February, 1820, the Mayflower of Liberia weighed anchor in New York harbor, and, convoyed by the U. S. sloop-of-war Cyane, steered her course toward the shores of Africa. The pilgrims were kindly treated by the authorities at Sierra Leone, where they arrived on the ninth of March; but on proceeding to Sherbro Island they found the natives had reconsidered their promise, and refused to sell them land. While delayed by negotiations the injudicious nature of the site selected was disastrously shown. The low marshy ground and the bad water quickly bred the African fever, which soon carried off all the agents and nearly a fourth of the emigrants. The rest, weakened and disheartened were soon obliged to seek refuge at Sierra Leone.

In March, 1821, a body of twenty-eight new emigrants under charge of J. B. Winn and Ephraim Bacon, reached Freetown in the brig Nautilus. Winn collected as many as he could of the first company, also the stores sent out with them, and settled the people in temporary quarters at Fourah Bay, while Bacon set out to explore the coast anew and secure suitable territory. An elevated fertile and desirable tract was at length discovered between 250 and 300 miles S. E. of Sierra Leone. This was the region of Cape Montserado. It seemed exactly suited to the purposes of the colonists, but the natives refused to sell their land for fear of breaking up the traffic in slaves; and the agent returned discouraged. Winn soon died, and Bacon returned to the United States. In November, Dr. Eli Ayres was sent over as agent, and the U. S.

schooner Alligator, commanded by Lieutenant Stockton, was ordered to the coast to assist in obtaining a foothold for the colony. Cape Montserado was again visited; and the address and firmness of Lieutenant Stockton accomplished the purchase of a valuable tract of land.

The cape upon which the settlers proposed to build their first habitations consists of a narrow peninsula or tongue of land formed by the Montserado River, which separates it from the mainland. Just within the mouth of the river lie two small islands, containing together less than three acres. To these, the Plymouth of Liberia, the colonists and their goods were soon transported. But again the fickle natives repented the bargain, and the settlers were long confined to "Perseverance Island," as the spot was aptly named. Space forbids entering on the interesting details of the difficulties they successfully encountered. After a number of thrilling experiences the emigrants, on April 25, 1822, formally took possession of the cape, where they had erected rude houses for themselves; and from this moment we may date the existence of the colony. Their supplies were by this time sadly reduced; the natives were hostile and treacherous; fever had played havoc with the colonists in acclimating; and the incessant downpour of the rainy season had set in. Dr. Ayres became thoroughly discouraged, and proposed to lead them back to Sierra Leone. Then it was that Elijah Johnson, an emigrant from New York, made himself forever famous in Liberian history by declaring that he would never desert the home he had found after two years' weary quest! His firmness decided the wavering colonists; the agents with a few faint-hearted ones sailed off to America; but the majority remained with their heroic Negro leader. The little band, deserted by their appointed protectors, were soon reduced to the most dire distress, and must have perished miserably but for the arrival of unexpected relief. The United States Government had at last gotten hold of some ten liberated Africans, and had a chance to make use of the agency established for them at so great an expense. They were accordingly sent out in the brig

Strong under the care of the Rev. Jehudi Ashmun. A quantity of stores and some thirty-seven emigrants sent by the Colonization Society completed the cargo. Ashmun had received no commission as agent for the colony, and expected to return on the Strong; under this impression his wife had accompanied him. But when he found the colonists in so desperate a situation he nobly determined to remain with them at any sacrifice. He visited the native chiefs and found them, under cover of friendly promises, preparing for a deadly assault on the little colony. There was no recourse but to prepare for a vigorous defense. Twenty-seven men were capable of bearing arms; and one brass and five iron field-pieces, all dismantled and rusty, formed his main hope. Ashmun at once set to work, and with daily drills and unremitting labor in clearing away the forest and throwing up earthworks, succeeded at last in putting the settlement in a reasonable state of defense. It was no easy task. The fatiguing labor, incessant rains, and scanty food predisposed them to the dreaded fever. Ashmun himself was prostrated; his wife sank and died before his eyes; and soon there was but one man in the colony who was not on the sick-list. At length the long-expected assault was made. Just before daybreak on the 11th of November the settlement was approached by a body of over eight hundred African warriors. Stealthily following the pickets as they returned a little too early from their watch, the savages burst upon the colony and with a rush captured the outworks. A desperate conflict ensued, the issue of which hung doubtful until the colonists succeeded in manning their brass field-piece, which was mounted upon a raised platform, and turning it upon the dense ranks of the assailants. The effect at such short range was terrible. "Every shot literally spent its force in a solid mass of living human flesh. Their fire suddenly terminated. A savage yell was raised, . . . and the whole host disappeared."[1] The

[1] Ashmun.

victory had been gained at a cost of four killed and as many seriously wounded. Ammunition was exhausted; food had given out. Another attack, for which the natives were known to be preparing, could scarcely fail to succeed. Before it was made, however, an English captain touched at the cape and generously replenished their stores. On the very next evening, November 30, the savages were seen gathering in large numbers on the cape, and toward morning a desperate attack was made on two sides at once. The lines had been contracted, however, and all the guns manned, and the well-directed fire of the artillery again proved too much for native valor. The savages were repulsed with great loss. The unusual sound of a midnight cannonade attracted the Prince Regent, an English colonial schooner laden with military stores and having on board the celebrated traveller Captain Laing, through whose mediation the natives were brought to agree to a peace most advantageous to the colonists. When the Prince Regent sailed, Midshipman Gordon, with eleven British sailors volunteered to remain, to assist the exhausted colonists and guarantee the truce. His generosity met an ill requital; within a month he had fallen victim to the climate with eight of the brave seamen. Supplies were again running low, when March brought the welcome arrival of the U. S. ship Cyane. Captain R. T. Spence at once turned his whole force to improving the condition of the colonists. Buildings were erected, the dismantled colonial schooner was raised and made sea-worthy, and many invaluable services were rendered, until at length a severe outbreak of the fever among the crew compelled the vessel's withdrawal. It was too late, however, to prevent the loss of forty lives, including the lieutenant, Richard Dashiell, and the surgeon, Dr. Dix.

On the 24th of May, 1823, the brig Oswego arrived with sixty-one new emigrants and a liberal supply of stores and tools, in charge of Dr. Ayres, who, already the representative of the Society, had now been appointed Government Agent and Surgeon. One of the first measures of the new agent was

to have the town surveyed and lots distributed among the whole body of colonists. Many of the older settlers found themselves dispossessed of the holdings improved by their labor, and the colony was soon in a ferment of excitement and insurrection. Dr. Ayres, finding his health failing, judiciously betook himself to the United States.

The arrival of the agent had placed Mr. Ashmun in a false position of the most mortifying character. It will be remembered that in sympathy for the distress of the colony he had assumed the position of agent without authority. In the dire necessity of subsequent events he had been compelled to purchase supplies and ammunition in the Society's name. He now found himself superseded in authority, his services and self-sacrifice unappreciated, his drafts[1] dishonored, his motives distrusted. Nothing could show more strongly his devotion and self-abnegation than his action in the present crisis. Seeing the colony again deserted by the agent and in a state of discontent and confusion, he forgot his wrongs and remained at the helm. Order was soon restored but the seeds of insubordination remained. The arrival of 103 emigrants from Virginia on the Cyrus, in February 1824, added to the difficulty, as the stock of food was so low that the whole colony had to be put on half rations. This necessary measure was regarded by the disaffected as an act of tyranny on Ashmun's part; and when shortly after the complete prostration of his health compelled him to withdraw to the Cape De Verde Islands, the malcontents sent home letters charging him with all sorts of abuse of power, and finally with desertion of his post! The Society in consternation applied to Government for an expedition of investigation, and the Rev. R. R. Gurley, Secretary of the Society, and an enthusiastic advocate of colonization was despatched in June on the U. S. schooner Porpoise. The result of course revealed the probity, integrity

[1] These were eventually paid by the United States Government. Kendall's Report to Secretary of Navy, December, 1830.

and good judgment of Mr. Ashmun; and Gurley became thenceforth his warmest admirer. As a preventive of future discontent a Constitution was adopted at Mr. Gurley's suggestion, giving for the first time a definite share in the control of affairs to the colonists themselves. Gurley brought with him the name of the colony—Liberia, and of its settlement on the Cape—Monrovia, which had been adopted by the Society on the suggestion of Mr. Robert Goodloe Harper of Maryland. He returned from his successful mission in August leaving the most cordial relations established throughout the colony.

Gurley's visit seemed to mark the turning of the tide, and a period of great prosperity now began. Relay after relay of industrious emigrants arrived; new land was taken up; successful agriculture removed all danger of future failure of food supply; and a flourishing trade was built up at Monrovia. Friendly relations were formed with the natives, and their children taken for instruction into colonial families and schools. New settlements were formed; churches and schools appeared; an efficient militia was organized; printing presses set up and hospitals erected. On every side rapid progress was made. After years of illustrious service Ashmun retired to his home in New Haven, where he died a few days later, on August 25, 1828. Under Dr. Richard Randall and Dr. Mechlin, who successively filled his post, the prosperity of the colony continued undiminished.

The decade after 1832 is marked by the independent action of different State colonization societies. At first generally organized as tributary to the main body, the State societies now began to form distinct settlements at other points on the coast. The Maryland Society first started an important settlement at Cape Palmas, of which we shall make a special study. Bassa Cove was settled by the joint action of the New York and Pennsylvania Societies; Greenville, on the Sinou river, by emigrants from Mississippi; and the Louisiana Society engaged in a similar enterprise. The separate interests of the different settlements at length began in many cases to engender animosity and bad feeling; the need of general

laws and supervision was everywhere apparent; and a movement toward a federal union of the colonies was set on foot. A plan was at length agreed upon by all except Maryland, by which the colonies were united into the "Commonwealth of Liberia," whose government was controlled by a Board of Directors composed of Delegates from the State societies. This board at its first meeting drew up a plan of government, and Thomas Buchanan was appointed first Governor of the Commonwealth, 1837. The advantages of the union were soon apparent. The more aggressive native tribes with whom not a little trouble had been experienced, were made to feel the strength of the union; and many of the smaller head-men voluntarily put themselves under the protection of the Government, agreeing to become citizens, with all their subjects, and submit to its laws. The traffic in slaves all along the coast was checked, inter-tribal warfare prevented, and trial by the sassa-wood ordeal abolished wherever colonial influence extended. Mr. Buchanan was the last white man who exercised authority in Liberia. On his death the Lieutenant-Governor, Joseph Jenkins Roberts, succeeded him. Roberts, who afterward became Liberia's most distinguished citizen, was a Virginia Negro, having been born at Norfolk in 1809, and brought up near Petersburg. He obtained a rudimentary education while running a flat-boat on the James and Appomattox Rivers. In 1829 he went with his widowed mother and younger brothers to Liberia, where he rapidly rose to wealth and distinction. As Governor he evinced an efficient statesmanship that promised well for his future career.

Roberts had not long been governor when trouble arose with the British coast-wise traders that gave rise to a most interesting crisis. The Liberian Government in regulating commerce within its jurisdiction had enacted laws imposing duties on all imported goods. The English traders, accustomed for hundreds of years to unrestricted traffic on this very coast, were indignant at the presumption of the upstart colony, and ignored its regulations. The Government protested, but in vain. And at length the little colonial revenue schooner,

John Seyes, while attempting to enforce the laws at Edina, was actually seized by the stalwart Britisher and dragged before the Admiralty Court at Sierra Leone. A long discussion which would be profitless to follow in detail, ensued. The result was, that the John Seyes was confiscated. The British Government opened a correspondence with the United States, in which it was ascertained that Liberia was not in political dependence upon them. Whereupon the sovereignty of Liberia was promptly denied, her right to acquire or hold territory questioned, and she was given to understand that the operations of British traders would in future be backed by the British navy.

Evidently if Liberia was to maintain and govern her territory something must be done. The Colonization Society while claiming for Liberia the right to exercise sovereign powers, seems to have had the unacknowledged conviction, that England's position, however ungenerous, was logically unassailable. The supreme authority wielded by the Society, its veto power over legislative action, was undoubtedly inconsistent with the idea of a sovereign state. This is clearly apparent from the fact that though there was pressing necessity for a treaty with England, neither the colony nor the Society had power to negotiate it. It was accordingly determined to surrender all control over the colony; and the "people of the Commonwealth of Liberia" were "advised" by the Society "to undertake the whole work of self-government;" to make the necessary amendments to their Constitution, and to declare their full sovereignty to the world.

The suggestion was adopted in Liberia by popular vote, and a convention met on July 26, 1847, adopted a Declaration of Independence and a new Constitution, closely modelled on the corresponding documents of the United States. In September the Constitution was ratified by vote of the people. Governor Roberts was elected to the office of President, upon which he entered January 3, 1848. His inaugural address is one of remarkable interest, fitly proclaiming to the world a new Republic.

IV.

Maryland in Liberia.

The widespread interest awakened by the actual establishment of a permanent colony at Monrovia led to the formation of a number of State Colonization Societies, at first purely auxiliary to the central body, but later in some cases independent. The foundation of independent settlements at Bassa Cove and Sinou by the New York, Pennsylvania and Mississippi Societies, and their union in 1837 into the Commonwealth, has been considered. A much more important colony was founded by Maryland at Cape Palmas, which for years maintained its independence.

In 1831, the Maryland State Colonization Society was formed. Active interest in the movement had long been felt in the State, and it scarcely needed the eloquence of Robert Finley, son of the old champion of colonization, who visited Baltimore in that year, to awaken enthusiasm. The Society had hardly been formed when ample funds were provided in an unexpected way. In August, 1831, a tragic Negro uprising took place in Virginia, in which some sixty-five white men, women and children were murdered. The Southampton Massacres were attributed largely to the instigation of the troublesome free-Negro element, and the growing sentiment in favor of emancipation was abruptly checked. The Maryland Legislature, sharing the general excitement, passed in December a resolution which became law in March, and proved to the State Society what the Act of March 3, 1819, was to the main organization. The connection was more explicit. Three

members of the Society were to be appointed Commissioners to remove *all* free Negroes to Liberia. The sum of $20,000 in the current year, and of $10,000 in each succeeding year, for a period of twenty years, was devoted to the purpose. Any free Negro refusing to emigrate was to be summarily ejected from the State by the sheriff. The wave of feeling which dictated this monstrous piece of legislation passed away before any of its harsh provisions were carried out. But the beneficent portion remained in force. The Society was left in the enjoyment of the liberal annuity of $10,000.

In October, 1831, and December, 1832, expeditions were sent out which landed emigrants at Monrovia. The difficulty of arriving at an agreement with the parent Society regarding the rights and status of these people, together with other considerations, led to the adoption of the idea of founding a separate colony. The plan was adopted largely through the support of Mr. John H. B. Latrobe, throughout his life one of the most active and efficient friends of colonization. The motives of the undertaking were distinctly announced to be the gradual extirpation of slavery in Maryland, and the spread of civilization and Christianity in Africa. Cape Palmas, a bold promontory marking the point where the coast makes a sharp bend toward the east, was selected as the new site. Its conspicuous position makes it one of the best known points on the coast, and some identify it with the "West Horn" reached by Hanno, the Carthaginian explorer, twenty-nine days out from Gades. Dr. James Hall, who had gained experience as physician in Monrovia, was placed in charge of the expedition, and the brig Ann, with a small number of emigrants, sailed from Baltimore November 28, 1833. A firm legal basis was projected for the new establishment in a Constitution to which all emigrants were to subscribe. The experience gained by the older colony was put to good use. Regular courts, militia, and public schools were provided for from the first.

The vessel touched at Monrovia, gathered as many recruits as possible from those sent out on the two previous expeditions,

and finally anchored at Cape Palmas on February 11, 1834. After the usual tedious "palaver" and bargaining, the natives formally sold the required land. The cape is a promontory some seventy-five feet in height, separated from the mainland, except for a narrow, sandy isthmus. A river, navigable for some miles to small boats, opens opposite it, and forms a safe harbor. A long, salt-water lake extends to the east, parallel to the coast. The land is very fertile and well adapted to farming. Several native villages lie near the cape. From a well-founded fear of native treachery the colonists laid out their town on the promontory, upon the summit of which a brass six-pounder was mounted. Farm lands were laid out on the mainland, and in a short time the little community was in a thriving condition. None of the distressing misfortunes encountered by the colony at Monrovia marred the early history of "Maryland in Liberia."

In 1836 the health of Dr. Hall, whose services to the infant colony had been invaluable, became so much impaired that he was obliged to resign. He returned to the United States, and long rendered the Society efficient service in another capacity. John B. Russworm, a citizen of Monrovia, and once editor of the Liberia *Herald,* was appointed Governor, and served ably and faithfully until his death in 1851. Early in his administration a convenient form of paper currency, receivable at the Society's store, was introduced, and proved most useful in trade with the natives. In 1841 some slight difficulties with employes of missions led the Society, while still retaining control of affairs, to assert by resolution that the colony was a sovereign State. A revenue law introduced in 1846 soon produced an income of about $1,200. In this year began the trips of the "Liberia Packet," a vessel maintained by a company formed to trade between Baltimore and *Harper,* as the town of the colony was named, in honor of Robert Goodloe Harper. A certain amount of trade was guaranteed and other aid given by the Society. In 1847 the

justiciary was separated from the executive; a chief justice and a system of courts were provided for.

The year 1852 ended the period during which the Society drew its annual stipend from the State treasury; but the General Assembly was induced to extend the provisions of the Act of 1831 for a further period of six years. It may be as well to note here that in 1858 a further extension was made for five years, the amount at the same time being reduced to $5,000 per annum.[1] For twenty years the colony had flourished under the care and good management of the Society. Prosperity now seemed secure, and a spirit of discontent, a desire to throw off the yoke and assume autonomy began to prevail. The great success following the assumption of Independence by Liberia in 1847, and the recognition at once obtained from the leading nations of Europe, naturally strengthened the feeling. A committee of leading citizens petitioned the Society to relinquish its authority, at the same time demanding or begging almost everything else in its power to bestow. The Society was further asked by its spoiled fosterling to continue to support schools, provide physicians and medicine, remit debts, and finally, to grant a "loan" of money to meet the expenses of government.[2]

The Board of Managers, though deeming the colony still unripe for independence, generously determined to grant the request, as made advisable by force of circumstances. Among other things it was feared that the better class of colonists might be attracted toward the independent State of Liberia. A sort of federal union with that State was suggested, but found impracticable. A convention met and drafted a Constitution, which was submitted to the Board. An agreement was reached as to the conditions of the transfer of the

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[1] The outbreak of the Civil War ended the arrangement after the third payment.

[2] This singular petition is preserved in Minute Book No. 4 of the M. S. C. S., p. 36.

Society's lands, etc. Both were ratified by the people, and in May, 1854, Wm. A. Prout was elected Governor. Other officials, senators and representatives, were chosen at the same time.

The prosperity of the colony continued under the careful management of Gov. Prout. On his death the Lieutenant-Governor, Wm. S. Drayton, succeeded to his office. It was not long before the "rash and imprudent" conduct of this official precipitated a serious conflict with the natives. An expedition against them resulted in a demoralizing defeat, with loss of artillery and twenty-six valuable lives. In consternation an urgent appeal was sent to Monrovia. The treasury of the Republic was exhausted from the effects of the uprising of the Sinou river tribes; but Dr. Hall was fortunately present, and supplied the Government with a loan from the funds of the Maryland Society. One hundred and fifteen Liberian troops, under command of ex-President Roberts, were soon embarked for Cape Palmas, and easily overawed the native chiefs, who agreed to a fair adjustment of their grievances by treaty, February 26, 1857.

The war was not without important results. The Maryland colonists were thoroughly aroused to the weakness of their isolated position, and determined to have union with Liberia at any price. It was known that the Republic was willing to admit Maryland only as a county, on precisely the same terms as the other three—Montserado, Sinou, and Bassa. State pride and the views of the Society had hitherto kept them from such a union; but now, in the reaction from their recent terror, a vote of the people called for by Act of the Legislature was unanimous in favor of "County Annexation;" and a committee was appointed to arrange matters at once with Roberts. When he declined to assume any such responsibility, they actually proceeded to dissolve the Government, and cede all public property forthwith to the Republic of Liberia. The interesting document entitled the "Act or Petition of Annexation," shows the number of colonists to have

been at this time 900 and the aboriginal population about 60,000. The tax on imports produced $1,800 a year. The State's liabilities were $3,000, with assets estimated at $10,000.

The Liberian Legislature by an Act of April, 1857, formally received the colony into the Republic as "Maryland County." The advantages gained by this change undoubtedly more than counterbalanced any loss of independence. Though the total dissolution of the government and surrender of all rights and property before any negotiation with Liberian authorities had taken place, seems inconceivably rash statescraft, the wisdom of the colonists in desiring the union is unquestionable.

At the time of annexation the Maryland Colonization Society had on hand some $6,000, which was invested, and the interest devoted to a school at Cape Palmas; in connection with this trust its existence is prolonged. Up to the end of its period of activity it had received and expended nearly half a million dollars; the balance sheet of December 31, 1857, may be of interest:

State Appropriations, ...	$ 930.00
State Colonization Tax, ...	12,851.00
Colonial Agency, ...	1,091.85
Columbia Expedition, ...	248.88
Stock of C. & L. Trading Co., . .	1,250.00
Mdse., ...	104.62
State Fund, ...	241,922.16
Contributions, ...	45,385.74
Profit and Loss, ...	139,972.31½
J. T. G., Colonial Agent, ...	126.70
	443,883.26½

V.

The Republic of Liberia.

The History of Liberia from this point on assumes a peculiar interest. The capacity and capabilities of the Negro are subjected to a crucial test. He is left fully freed from the control or influence of an alien race, in possession of a borrowed civilization, and of a borrowed political system of an advanced type, dependent on popular intelligence for its very existence. Can he maintain his position? Will he make further progress, developing along lines peculiar to his race and environment, and spreading a new civilization among the adjacent tribes? Or is he to lapse helplessly back into his original condition—to be absorbed into the dense masses of surrounding barbarism? The question is a vital one. The solution of weighty problems in large part depends upon the answer.

The form of government was, as has been seen, closely copied from that of the United States. There is the same tripartite division—executive, legislative and judicial. The President is elected every two years, on the first Tuesday in May. He is commander-in-chief of the army and navy; makes treaties with the concurrence of two-thirds of the Senate, with whose advice he also appoints all public officers not otherwise provided for by law.

The legislative authority consists of a Senate of two members from each county, elected for four years, and a House of Representatives holding office for two years; four members being apportioned to Montserado county, three to Bassa, one to each other county, with one additional representative for

each 10,000 inhabitants. The judicial power was vested in a Supreme Court with original jurisdiction in all cases affecting ambassadors and consuls and where the Republic is a party, and appellate jurisdiction in all other cases; and in subordinate courts to be established by the Legislature.

The majority of the colonists had been long accustomed to similar institutions in the land of their captivity, and the new machinery of government was soon running smoothly. Within the little State peace and prosperity prevailed; its foreign relations, on the contrary, were involved in the greatest uncertainty. It had indeed severed the leading strings which bound it to its natural protector, and stood forth in the assertion of its independence. But it was wholly unsupported and unrecognized. The dispute with England, whose protegé on the north looked with jealousy and distrust on Liberian policy, remained unsettled. The danger was real and pressing. Clearly recognition must be sought and an international footing obtained without delay. President Roberts accordingly determined to go abroad, and as at once chief magistrate and ambassador appeal to the leading courts of Europe. His first effort, however, was directed toward obtaining alliance with the United States. In America his reception was enthusiastic. But the delicacy with which the dissension on the slavery question made it necessary to handle every subject remotely bearing on that bone of contention, prevented him from obtaining even the formal recognition of Liberia. Roberts then determined by pleading his country's cause in England to arouse compassion in the heart of the power from which there was most to fear. Here substantial rewards met his efforts. His prepossessing personality, tact, and statesmanlike qualities won many friends.[1] With their support the

[1] Carl Ritter, who saw him in 1852, speaks of him as "den edlen, hochgebildeten, erfahrenen, weisen, und der Rede sehr kundigen Staatsman Wir (*i. e.*, Ritter,) haben wiederholt seinen würdenvollen Reden in den ersten Kreisen in London beigewohnt."

recognition of Liberia as a sovereign State was soon obtained, together with a commercial treaty which left nothing to be desired. In further evidence of kindly sentiment the English Government presented the young Republic with a trim little cutter of four guns for coast protection. In France and Belgium similar generous treatment was experienced, and Roberts was conveyed home in triumph on the British man-of-war Amazon.

A second visit of Roberts to England, in 1852, four years later, to adjust disputes with traders who claimed certain tracts of land, was equally successful, and France, under Louis Napoleon, presented him with arms and uniforms for the equipment of the Liberian troops. In 1852 Prussia also extended her friendship, soon followed by Brazil and the free Hanse towns. In 1862, the necessity for cautious dealing with the race question having passed away, the United States government at last formally recognized the Republic, and Holland, Sweden, Norway, and Hayti formed treaties in 1864. The consent of Portugal and Denmark in 1865, and of Austria in 1867, brought Liberia into treaty relations with nearly all the leading commercial nations.

The internal condition of the Republic during the first decade was one of unprecedented growth and prosperity. The Colonization Society in America was in a flourishing condition, and gained friends on every side. Its receipts for the ten years were not far short of a million dollars; and this generous means permitted the transportation, in the same period, of over five thousand chosen emigrants. The accession of so large a force of laborers added a new stimulus to the activity awakened by self-government. Many new settlements were formed and all the older ones received an infusion of new strength. Agriculture, especially the cultivation of the great staples, rice, coffee, sugar and cotton, made rapid progress; while commerce was stimulated by the establishment of regular monthly lines of steamers between England and various points on the coast, the first of which was started in 1853. The enterprise

of Holland soon added still other lines. Communication with America was at the same time facilitated by the regular trips of a large vessel built for the purpose, the gift to the Society of Mr. John C. Stevens of Maryland.

At the close of his fourth administration President Roberts decided to decline reëlection. For eight years he had been at the helm, and had brought the ship of state safely through her first perilous voyages. And now while the waters seemed smooth and skies serene he thought it best to intrust her guidance to other hands. The election took place in May, 1855, amidst scenes of political strife and party violence at once intense and short-lived. It resulted in the choice of Stephen A. Benson for President and Beverly P. Yates for Vice-President. Both were distinctly the product of Liberian training. Benson was brought over, at the age of six years, by his parents in 1822, and received his entire education in the country. He became a successful merchant and entered political life in the wake of Roberts. As chief magistrate he showed himself a practical and efficient man, with the interests of the country at heart.

One of the leading objects of Benson's policy was the improvement and elevation of the aborigines; but his designs were in part frustrated by the outbreak of a stubborn and exhausting war with the native tribes dwelling about the Sinou River. Details must be omitted for want of space; but this war devastated four settlements and sadly depleted the national treasury. It was soon afterwards that the Maryland colony at Cape Palmas was almost overwhelmed in a similar native uprising, and united with the Republic, as elsewhere narrated.

A widespread scarcity of provisions followed these wars, which gave rise to much apprehension. But this eventually did good in giving new emphasis to the fact that main reliance must be placed upon agriculture rather than trade. The great resources of Liberia were shown at a National Fair, held in December, 1858; premiums were awarded for the best specimens of coffee, arrow-root, cotton, rice, ginger, potatoes, oxen,

sheep, swine, turkeys, butter, preserves; cloth and socks of African cotton; boots; soap and candles from palm oil; ploughs, hoes and other implements from native iron and home manufacture; farina; chocolate; planks, shingles, cabinet work, and many other products of Liberian agriculture and industry.

President Benson was reëlected without opposition, and entered upon his second term in January, 1858. A fresh outbreak of the slave trade in this year was followed by a number of captures by U. S. cruisers, giving rise to the old difficulty in regard to the disposition of the cargoes. The Act of March 3, 1819, which had long fallen into disuse, was revived, and a contract made with the Colonization Society to transport and maintain for a twelvemonth the recaptured Africans already on the Government's hands. The substitution of small, swift steamers for the craft of older days so increased the efficiency of the navy that captures were made in rapid succession. Within two months 1,432 Africans were landed at Key West. This state of affairs made further legislation immediately necessary. Congress, acting upon the suggestion of a Presidential message, passed an Act amending the Act of March 3, 1819, which empowered the President to form a five-years' contract with "any person or persons, society or societies," to receive in Africa and care for the unfortunates rescued from slavers, for the period of one year, and at a price of $100 per capita. Commanders of cruisers were to be instructed to land their captures directly upon the coast of Liberia whenever practicable; immediate measures were to be taken for removing to Africa those already at Key West; and the sum of $250,000 was appropriated to defray expenses.

Three large vessels were at once chartered and stored with $60,000 worth of supplies; with the least possible delay the suffering crowd at Key West was transported to Liberia; but only 893 survived the passage. The effect of the new orders issued to the U. S. slave squadron was soon felt in Liberia. On August 8, 1860, the *Storm King* unexpectedly arrived

with a cargo of 619; within twenty-four hours the Erie, prize to the steamer Mohican, followed with 867. Tidings came that still larger numbers were en route. The effect of this inundation of liberated barbarians upon the small civilized community, already surrounded by savage swarms, may be imagined. The greatest consternation prevailed, and excitement rose to fever heat. President Benson wrote to the Society that great evils would result unless means were liberally supplied, and entire control of the new arrivals given to the Liberian Government. The Society accordingly transferred the execution of its contracts to that government, and placed at its disposal all money received by their terms. This action seems to have allayed the worst apprehensions; and although over 4,000 recaptured Africans were landed within the space of two months, no harm seems to have resulted. They made rapid progress in civilization, becoming assimilated to and in many cases intermarrying with the colonists; from among them arose some of the best citizens of the Republic.

President Benson's policy in regard to the natives was successful in bringing many tribes much more closely under the influence of the government. A number of steps were taken toward actively spreading among them the arts of civilized life, improving their methods of agriculture, and checking the evils of intertribal warfare and of superstition. A poll tax of one dollar a year was levied on each male adult, to be collected from the chiefs of the several districts; with a part of the funds thus raised schools for popular instruction were to be established throughout the country.

The control and oversight by the central authority of so many small settlements scattered over a large range of coast had been greatly facilitated by the small armed cutter presented in 1848 by the English goverment. This was now found to be hopelessly out of repair, and was generously replaced by the donor with another and somewhat larger vessel—the Quail, an armed schooner of 123 tons. About the same time the New York Society sent over a small steamer to provide

rapid and regular communication between points along the coast. In honor of a liberal benefactor it was called the "Seth Grosvenor."

The third and fourth administrations of Benson passed uneventfully, and in January, 1864, Daniel B. Warner, who, the May previous, had been elected, succeeded him. Warner was born near Baltimore, in 1812, and emigrated in 1823. The Civil War in America, with the sanguine hopes it aroused in the breast of the Negro, caused a rapid falling off in the number of applicants for transportation to Liberia. The income of the Society for once exceeded the demand upon it, and several good investments were made. Liberia, however, was demanding more cultivators. A supply came from an unexpected quarter. Two societies were organized by thrifty negroes of Barbadoes, to return to Africa and make their home in the new Republic. Agents were sent out, and sympathy with their enterprise enlisted. The Liberian Government issued a proclamation of cordial invitation, and the Legislature appropriated $4,000 to assist the colonists, increasing in their case the allotment of land from ten to twenty-five acres for each family. The Colonization Society devoted $10,000 to their aid, and despatched an experienced agent to take charge of the expedition. A large vessel was chartered, and after a pleasant voyage of thirty-three days, without the loss of a single life, 346 emigrants were landed at Monrovia. They proved a welcome and valuable acquisition, many being mechanics and skilled laborers.

After the close of the war, the alluring prospect of "ten acres and a mule" having failed our freedmen, the Society again received numerous applications for passage. The M. C. Stevens had been sold during the period of depression; another and larger vessel, the Golconda, was therefore purchased and fitted for an emigrant ship. During her first four voyages she safely carried over 1,684 persons.

In January, 1867, the semi-centennial of the founding of the Colonization Society was celebrated in Washington. From

the review of the fifty years' work it appeared that the sum of $2,558,907 had been expended, exclusive of outlay by the Maryland Society, and of the large sums expended by the United States Government. 11,909 emigrants had been sent over, in 147 vessels; of these 4,541 were born free, 344 purchased freedom, and 5,957 were emancipated for the purpose of going to Liberia.[1] Besides these, 1,227 had been settled by the Maryland Society, and 5,722 recaptured Africans had been sent back by the United States Government.

In January, 1868, James S. Payne entered upon the office of President. He is another example of Liberian training. Born in Richmond, Va., in 1819, he was taken before his tenth year to Monrovia by his father. One of the leading purposes of his administration was the establishment of closer intercourse with the great tribes of the interior. These people, the Mandingoes especially, were much further advanced in civilization than the coast tribes, who formed a barricade between them and Liberia, and offered determined opposition to any attempt to penetrate inland. They feared to lose their advantageous position as middlemen, and succeeded in keeping anything but the vaguest rumors about the interior from reaching the colonists. In 1869 Benjamin Anderson, a young Liberian appointed by the Government, and provided with liberal financial aid by a wealthy citizen of New York, accomplished an extremely interesting journey to a point over 200 miles from the coast.[2]

With great difficulty and the expense of a small fortune in presents to captious and rapacious chiefs, he succeeded in making his way from point to point along a course roughly corresponding to that of the St. Paul's River. The route lay through dense forests, along paths worn by many generations of native feet. The ascent was steady; at 100 miles from the coast the elevation was 1,311 feet, and toward

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[1] *Semi-Centennial Memorial*, p. 190.

[2] B. Anderson, *Narrative of a Journey to Musardu.*

the end of the journey it rose to 2,257 feet. All along the way the population was dense, and showed a steady improvement in character, civilization and hospitality as the coast was left behind. The object of his journey, Musardu, the chief city of the Western Mandingoes, was at length reached, just on the edge of the primeval forest. Beyond lies a vast plateau covered with tall grass, showing here and there a solitary palm, and stretching away to the head waters of the Niger. The climate is wholesome, the air bracing, and the soil fertile.

The city proved large and populous; the houses were small and of a monotonous uniformity, bewilderingly placed without apparent arrangement. The whole was surrounded with a huge mud wall, which served not only as a defense against foes, but to keep out wild beasts, especially elephants, herds of which were frequently seen near the town. The inhabitants were strict Mussulmans, and were much further advanced in civilization than even the most intelligent tribes through which he had passed. They had an extensive commerce with the interior, caravans coming from places as distant as Timbuctoo. Good horses were plentiful, and there were evidences of the existence of valuable gold mines. Anderson was received with profuse hospitality; they appeared to be delighted with the idea of opening trade with Liberia, and promised gold, ivory and various commodities in exchange for European goods.

Another journey with the same general results was subsequently made by another citizen, to Pulaka, about one hundred miles to the southeast of Monrovia. These explorations are of great interest. They show the belt of coast occupied by Liberia to be merely the entrance to a high and healthful interior of great fertility and unlimited resources, over which the Republic has power to expand indefinitely.

President Payne's successor was Edward James Roye, who was duly inaugurated January 3, 1870. Born in Newark, Ohio, in 1815, he had passed through the public schools of his native town, afterwards attending the college at Athens,

Ohio, and Oberlin. He went to Liberia in 1846, becoming a prosperous merchant and politician. From 1865 to 1868 he held the post of Chief Justice. Roye came into office at a time when a rage for internal improvements possessed the country; and with this spirit he was in full sympathy. His inaugural outlines a bold and ambitious policy. The resources of the Treasury were entirely inadequate to his extensive projects, and in an evil moment the Legislature passed an Act authorizing the negotiation of a loan of $500,000. The loan was placed in London on terms which netted only £85 per bond of £100, redeemable at par in 15 years and bearing interest at 7 per cent. The amount thus offered was further reduced by the requirement that the first two years' interest should be paid in advance. From the remainder were deducted various agents' commissions and fees, until at length the principal reached Monrovia sadly reduced in amount,—not over $200,000. And this soon disappeared without any visible result. It is an old story; but in Liberia's case it was particularly disastrous. For with her little revenue, rarely exceeding $100,000, it soon became impossible to pay the $35,000 yearly interest on a debt for which she had practically received not a single advantage. And this accumulating at compound interest has reached a magnitude absolutely crushing. So desperate is her financial condition that many believe inevitable the fate which croaking prophets have long foretold, and against which she has struggled bravely—absorption by England.

Serious as were the more remote effects of the financial blunder just considered, its immediate consequences brought upon the country a crisis which might have resulted in civil war. Great dissatisfaction with the negotiation of the loan prevailed. The Administration was severely criticised; serious accusations were brought against it. While the excitement was at fever heat matters were complicated by an attempt of the Administration to prolong its hold of office, which precipitated the threatened outbreak. For some years a Consti-

tutional Amendment had been under consideration, lengthening the term of President and members of the Legislature. The measure had been submitted to the people, and twice voted upon; but the result was a subject of dispute. Roye and his party maintained that it had been duly carried and was a part of the organic law of the land; and that as a consequence his term did not expire until January, 1874. A proclamation was issued forbidding the coming biennial elections to be held.

This action at once aroused violent opposition. A strong party declared that the amendment had not been carried; and in any event could not be construed to apply to the present incumbent. The proclamation was disregarded; the polls opened on the accustomed day; and the veteran Joseph J. Roberts, aptly called the epitome of Liberian history, was elected by large majorities.

Far from being subdued by the decided expression of popular will Roye and his supporters, with the spirit of the decemvirs of old, determined to maintain power at any hazard. Roberts's election was declared illegal, and of no effect. Throughout the summer the two parties stood at daggers drawn. At length the increasing strength of the opposition encouraged the thought of removing the President from office. The legal method of impeachment seemed far too slow and uncertain for the temper of the times. An excited convention was held in Monrovia, October 26, 1871, at which a "Manifesto" was adopted decreeing his deposition. A few extracts disclose its character:

"President Roye has, contrary to the Constitution, proclaimed himself President for four years, although elected for only two years.

"He has distributed arms and munitions of war, and has not ceased his efforts to procure armed men to crush the liberties of the people.

"He has contracted a foreign loan contrary to the law made and provided; and without an act of appropriation by the

Legislature he has with his officers been receiving the proceeds of that loan.

"Every effort to induce him to desist from his unconstitutional course has been unavailing. Threats and entreaties have been alike lost upon him. He has turned a deaf ear to the remonstrances from all the counties of the Republic:

"Therefore, on the 26th day of October in the year of our Lord 1871, and in the twenty-fifth year of the Independence of the Republic, the sovereign people of Liberia did by their resolutions in the city of Monrovia, joined to the resolutions from the other counties of the Republic, depose President E. J. Roye from his high office of President of Liberia; and did decree that the Government shall be provisionally conducted by a Chief Executive Committee of three members, and by the chiefs of Departments until the arrival of the constitutional officer at the seat of Government."

Before the party of the Administration could recover from the shock of this action, President Roye and his Secretaries of State and of the Treasury were arrested and thrown into prison,—a *coup d'état* which made his opponents undisputed masters of the situation. The appointed Committee took charge of affairs; the excitement died away with a rapidity characteristic of Liberian politics, and in January, 1872, Roberts was triumphantly inaugurated. Roye died in prison soon afterward.

A reign of peace and prosperity followed under Roberts, interrupted toward the end of another term, to which he was elected, by a severe war with the Grebo tribe near Cape Palmas. Limited space will prevent detailed consideration of the later history of the Republic. Payne was elected to a second term in 1876. A. W. Gardiner was Chief Executive for three successive terms, from 1878–1884; and H. R. W. Johnson, a native born Liberian, son of the famous pioneer Elijah Johnson, was made President in 1884. The recent years of the Republic have not brought an increased tide of immigration, nor any marked progress. The diminished interest in colonization felt in the United States so crippled the finances

of the Society that few immigrants have been sent in the last decade. That large numbers of Negroes are willing, even anxious to go, is shown by the lists of the Society, which has adopted the policy of aiding only those who can pay a part of their passage. Several instances of the formation of societies among the Negroes themselves to provide for their own transportation have occurred. In South Carolina the "Liberia Joint Stock Steamship Company" was formed, which succeeded in purchasing a vessel and sending over one expedition of 274 emigrants. The company was unfortunate and failed financially before another attempt could be made. In Arkansas a large secret Society for the same object was formed, several hundred members of which made their way to New York and prevailed upon the Colonization Society to give them passage.[1]

The culmination of a dispute with Great Britain over the north-western boundary of Liberia is perhaps the most interesting topic of her recent history. The boundaries of the Republic were never very definitely marked out, as her territory grew by gradual settlement and purchase from native chiefs. Even to-day there is no hard and fast interior border line; the country extends back indefinitely from the coast, new land being taken up as settlement proceeds. In 1849 the coast line acquired in this way extended from the San Pedro River on the south-east to Cape Mount, the extreme settlement on the north-west. Between 1849 and 1852 various purchases were made from the natives covering some fifty miles more of the north-western seaboard. These purchases extended to She-Bar, very near Sherbro Island, and were confirmed by formal deeds from chiefs of the local tribes. The conditions of the deeds bound Liberia to establish schools in the districts ceded, and to guarantee the protection, peace and safety of the natives. If now a few settlements had been made in this territory all future trouble would have been avoided; but all available energy was needed for intensive

[1] A. C. Reports of 1881 and 1882.

development, and the newly acquired territory was left uncolonized. In the course of time English traders established themselves within this district, who refused to recognize Liberia's jurisdiction, and who smuggled in large quantities of goods in bold defiance of the revenue laws. As early as 1866 correspondence with the British Government was opened; and Liberia's jurisdiction was more than once virtually recognized. Matters were complicated by the outbreak of disturbances among the natives, in quelling which the Republic was obliged to use military force—a course which resulted in the destruction of property belonging to the English traders. Claims were at once brought against Liberia through the English Government to a large aggregate amount. Holding Liberia liable for damages received in the territory was a practical admission of her jurisdiction. Nothing was accomplished until 1871, when Lord Granville proposed to President Roye, who was then in England, to compromise on the River Solyma as the limit of the Republic. This is about the middle of the disputed territory. Roye weakly agreed, and this agreement is known as the Protocol of 1871. It was not ratified by the Senate. The tact of President Roberts staved off the crisis for some time; but at length the English Foreign Office demanded a settlement, and a commission of two from each State and an arbitrator appointed by the President of the United States met on the ground. Every possible delay and impediment was resorted to by the British commissioners, who further refused to submit the points disputed to the umpire. Of course, no agreement was reached.

The situation remained unchanged until 1882. On March 20 four British men-of-war silently entered the harbor, and Sir A. E. Havelock, Governor of Sierra Leone, came ashore. President Gardiner was intimidated into acceding to the demand that the boundary should be fixed at the Manna River, only fifteen miles from Cape Mount. But when this "Draft Convention," as it was called, came before the Senate for ratification, it was indignantly repudiated. At the next regular

meeting of the Legislature in December, a resolution refusing to ratify the Draft Convention was passed, and a copy sent to Havelock. It elicited the reply :—

"Her Majesty's Government cannot in any case recognize any rights on the part of Liberia to any portions of the territories in dispute," followed by the peremptory announcement that "Her Majesty's Government consider that they are relieved from the necessity of delaying any longer to ratify an agreement made by me with the Gallinas, Solyma, and Manna River chiefs on the 30th of March, 1882, whereby they ceded to Her Majesty the coast line of their territories up to the right bank of the Manna River."

Liberia made a last feeble effort. A "Protest" was drawn up and sent to the various powers with whom she stood in treaty relations—of course, without result. The President of the United States replied at once, counselling acquiescence. Nothing else was possible. The Senate authorized the President to accept the terms dictated, and the "Draft Convention" was signed November 11, 1885. On April 26, 1888, Sir Samuel Rowe visited Monrovia and formally exchanged ratifications. Thus once more strength proved triumphant; Liberia's boundary was set at the Manna River, and Sierra Leone, which had possessed but a few hills and swamps, was given a valuable coast line.

VI.

Historic Significance of Colonization.

Colonization has come to be looked upon with unmerited indifference—with an apathy which its history and achievements surely do not deserve. To some, perhaps the present condition of the Republic seems a discouraging and inadequate return for the life and treasure lavished upon it; for others, hoping for a bloodless and gradual extinction of slavery, the Civil War carried away the chief element of interest. Others still, who looked for a ready solution of the Negro Problem in this country, have gradually lost heart in the face of the increasing millions of the race. And so, some from one cause, some from another, have lost interest in colonization and in Liberia, until a time has come when few have more than the vaguest knowledge of these terms. Sometimes the voice of contempt is heard; but this is always a proof of ignorance. Liberia stands forth historically as the embodiment of a number of ideas, efforts, principles, any one of which ought to secure at the least our respect, if not our sympathy and enthusiasm.

1. *As a Southern Movement toward Emancipation.*

This thesis will doubtless meet with the most strenuous opposition; but a careful and impartial study of the writings and addresses of those most prominent in the movement will convince anyone of their profound hope that colonization would eventually lead to the extinction of slavery in the

United States. It must be remembered that at the time of the formation of the Society the pro-slavery feeling in the South was by no means so strong as it became in later years, when the violence of Abolition had fanned it to a white heat. Indeed, during the whole period before 1832 there seems to have been a prevailing sentiment in favor of emancipation—at least throughout Maryland, Virginia, and North Carolina. But the condition of the free blacks was notoriously such that the humane master hesitated to doom his slaves to it by emancipating them. The colonizationist hoped, by offering to the free Negro an attractive home in Africa, to induce conscientious masters everywhere to liberate their slaves, and to give rise to a growing popular sentiment condemning slavery, which would in time result in its extinction. Of course there were those in the Society who would not have subscribed to this doctrine; on the other hand, many held views much more radical. But it is the men who formed and guided the Society, who wielded its influence and secured its success, whose opinions must be regarded as stamping its policy.

The Constitution of the Society did not touch upon this subject. It was needless to give unnecessary alarm or offense. But when in 1833 the Maryland Society adopted its Constitution—a much larger and more explicit one—the attitude taken is boldly announced:

"Whereas the Maryland State Colonization Society desires to hasten as far as they can the period when slavery shall cease to exist in Maryland, and believing that this can best be done by advocating and assisting the cause of colonization as the safest, truest and best auxiliary of freedom under existing circumstances," etc.

It may well be questioned whether such a plan would ever have succeeded: but it must not too hastily be called chimerical. As a practical result it secured the emancipation of several thousand slaves, many of whom were supplied by former owners with money for transportation and establishment in Africa. What further success it might have had was pre-

vented by the rise of the Abolition Movement. The intense pro-slavery feeling which this stirred up in the South caused the Colonization Society to be regarded with distrust and even active hostility. It was accused of secretly undermining slavery and exciting false hopes among the slaves. It was even said to foment discontent and raise dangerous questions for sinister purposes, and was subjected to bitter attack as "disguised Abolitionism."

From the opposite extreme of opinion the Society suffered assault still more violent. William Lloyd Garrison, in his intemperate zeal for "immediate emancipation without expatriation," could see nothing but duplicity and treachery in the motives of its adherents. His "Thoughts on Colonization" hold up the movement to public odium as the sum of all villainies, and in the columns of the *Liberator* no insult or reproach is spared. His wonderful energy and eloquence brought over to his camp a number of the Society's friends, and enabled him in his English campaign to exhibit it in a light so odious that he actually brought back a protest signed by the most eminent anti-slavery men of that country.

Assailed on one side and on the other the Society, as we have seen, serenely pursued its course. Apparently it did not suffer. But it can scarcely be doubted that its growth and expansion were seriously checked by the cross-fire to which it was subjected. Among the negroes themselves prejudices were industriously disseminated, and everything was done to make them believe themselves duped and cheated.

From these reasons colonization never reached the proportions hoped for by those who looked to it for the gradual extinction of slavery. But we should not fail to recognize in the movement an earnest and noble, if too ambitious, effort to solve, without violence or bloodshed, a problem only half disposed of by Lincoln's edict and the Fifteenth Amendment.

2. *As a Check to the Slave-Trade.*

The coast upon which the colony was established had for several hundred years been one of the chief resorts of the slave dealers of the western shores of Africa. Their "factories" were situated at numerous points on both sides of the early settlements. The coast tribes, broken up and demoralized by the traffic, waged ceaseless wars for the sole purpose of obtaining for the trader a supply of his commodity. It was their only means of getting supplies of the products and manufactures of civilization; and, as we have seen, when they found the presence of the newcomers an obstacle to their chief industry, they took up arms to expel them.

Until the year 1807 there was no restriction whatever on the traffic, and the proportions which it reached, the horrors it entailed, are almost incredible. Sir T. F. Buxton estimated on careful calculations that the trade on the western coast resulted in a loss to Africa of 500,000 persons annually. At length the progress of humanity drove England to declare war on the infamous traffic, and her cruisers plied the length of the continent to prevent infractions of her decree. At enormous expense the entire coast was put in a state of blockade.

The result was mortifying. Instead of disappearing, the exportation of slaves was found actually to increase, while the attending horrors were multiplied. Small, swift cutters took the place of the roomy slave-ships of older days, and the victims, hurriedly crowded into slave-decks but a few feet high, suffered ten-fold torments on the middle passage from inadequate supplies of food and water.

The colonists, even in their early feebleness, set their face resolutely against the slave trade: its repression was a cardinal principle. Their first serious wars were waged on its account. Ashmun risked his life in the destruction of the factories at New Cesters and elsewhere. The slavers, warned by many encounters, forsook at first the immediate neighbor-

hood of the settlements, and, as the coast line was gradually taken up, abandoned at length, after many a struggle, the entire region. Six hundred miles of the coast was permanently freed from an inhuman and demoralizing traffic that defied every effort of the British naval force. Nor was this all. The natives were reconciled by the introduction of a legitimate commerce which supplied all they had sought from the sale of human beings.

In still another way did the colony exercise a humane influence. Among the natives exists a domestic slavery so cruel and barbarous that the lot of the American plantation Negro seemed paradise in comparison. Life and limb are held of such small value that severe mutilation is the penalty of absurdedly slight transgressions, or is imposed at the arbitrary displeasure of the master, while more serious offenses are punished by death in atrocious form : as when the victim is buried alive with stakes driven through his quivering body.[1] The institution is of course a difficult one to uproot. But among the natives in the more thickly settled portions of the country it has ceased, and is mitigated wherever the influence of the Government penetrates, while the number of victims is greatly diminished by the cessation of inter-tribal warfare.

In this way Liberia has proved, from the standpoint of humanity, pre-eminently successful.

3. *As a Step toward the Civilization of Africa.*

George Whitefield is said to have declared to Oglethorpe when lamenting his failure to exclude slavery from Georgia, that he was making a mistake : the Africans were much better off as slaves than in their native barbarism, and would receive a training that would enable them ultimately to return and civilize the land of their nativity. In this bold idea he anticipated one of the leading thoughts of the fathers of coloniza-

[1] Anderson's *Journey to Musardu.*

tion, and, perhaps prophesied, a great migration which the world is yet to see. But to confine ourselves to the present and the strictly practical—there is to the interior of Liberia, sweeping away beyond the valley of the Niger, a country of teeming population and vast resources. That this territory be opened to the commerce of the world, and the blessings of civilization be conferred upon the people, it is necessary that some impulse of enlightenment come from without. The casual visit of the trader has been proved by experience to do vastly more harm than good. Vice and demoralization have too often followed in his track. The direction and instruction of European agents accomplish little. The best efforts of all men of this class have resulted in an unequal hand-to-hand fight with the deadly climate, in which no white man can work and live. Besides, the natives need more than guidance; they must have before them the example of a civilized settlement.

It would be impossible to imagine a more ideal agent for accomplishing this work than Liberia. True, its slow development has prevented it as yet from penetrating to the most fruitful portion of the interior district; but so far as it has gone the work has been wonderful. One after another of the native chiefs has sought, with his people, admission to the privileges of citizenship, agreeing to conform to the laws of the country and abolish inconsistent aboriginal customs. The schools are full of native children, while large numbers are distributed in a sort of apprenticeship among Liberian families for training in the arts of civilized life. The English language has become widely known. More remote tribes, while retaining native customs, have entered into agreements or treaties to abstain from war, to keep open roads and routes of commerce, to protect travellers and missionaries and such Liberians as may settle among them. This is in itself an advance; and in addition various forms of knowledge, improved implements and methods of agriculture must enter in and insensibly raise these tribes to a higher plane.

In reclaiming the natives lies a source of great future power for Liberia. When immigration from the United States shall assume such proportions that numbers of interior settlements can be made which shall be radiating centres of civilization, the enormous potential energy of native intelligence and labor will be brought to bear on the development of the country with marvellous results.

4. *As a Missionary Effort.*

The attempts of the Christian Church to evangelize the western districts of Africa constitute one of the saddest and most discouraging records of history. From the first attempt of the Roman church in 1481, it has been one continuous narrative of a futile struggle against disease and death. A whole army of martyrs has gone bravely to its doom leaving no trace of its sacrifice save unmarked and forgotten graves. It has indeed been a bitter experience that has proved this work can be successfully undertaken only by men of African blood, for whom the climate has no terrors. And the superiority of an established Christian community to a few isolated missionary stations requires no demonstration. From the first the colonists were active in spreading a knowledge of the Gospel among the natives. Lot Cary, one of the earliest emigrants, was an earnest missionary, and besides efficent work at home he established mission stations at Cape Mount and elsewhere.

In 1826 four emissaries of the Basle Missionary College made Monrovia their headquarters, and did some good work; but they soon succumbed to the climate. The American churches of those denominations most largely represented in Liberia—the Episcopal, Presbyterian, Baptist and Methodist—made strenuous efforts, and sent out a succession of missionaries, most of whom fell victims to the fever. Later, after learning the salutary lesson, they accomplished much through the organization and direction of the work of Liberian mission-

aries. In this way the gospel is safely and successfully propagated among the natives.

A foe more stubborn than paganism is to be met in the ranks of Islam. There seems to be something in its teachings which renders the native a ready convert. Its simplicity is readily understood; and it sanctions the practices of polygamy and slave-holding to which he is accustomed. Under the zealous proselytism of the Mandingoes the Mohammedan faith has taken a strong hold on the interior, and is spreading rapidly to the very doors of Liberia. Candor compels the admission that it brings with it a marked improvement in the condition and intelligence of the converts. Intemperance—which in many cases follows in the tracks of the Christian merchant—disappears. A knowledge of Arabic is soon acquired and the Koran is eagerly read and its principles put in practice. The whole life of the convert is transformed, and he becomes in turn zealous in the dissemination of the faith. The efforts of missionaries alone can never stem this torrent; if any impression is to be made upon the Mohammedan tribes it must be by the extension of Christian settlements and civilization.

5. *As a Refuge to the Negro from the Pressure of Increasing Competition in America.*

It would be unnecessary to bring into review the causes that are operating daily to make the conditions of earning a living in America more difficult. However much or little credence we place in the Malthusian theory of the increase of population, in the doctrine of diminishing returns, or the iron law of wages, all thinking men are agreed that the country is already entering upon a new era. The period of expansion, of the taking up of new territory by the overflowing population of the older districts, is practically ended; future development will be intensive, the country will be more thickly settled, and the sharpness of competition will be immeasurably

increased. The possibility of rising in life will be reduced to a minimum; and there will exist a class, as in the older civilizations of Europe, who live, and expect to see their children live, in a subordinate or inferior relation, without the prospect of anything better.

There may be under this new régime a number of occupations in which the Negro, by contentedly accepting a subordinate position, may hold his ground. Or the conditions of life may become so severe that a sharp struggle for existence will leave in possession the race which shall prove fittest to survive. To follow the train of thought would lead into all the unsolved difficulties of the Negro Problem. But surely there will be some among all the millions of the race who will become dissatisfied with their life here. Some will aspire to higher things, some will seek merely a field where their labor will meet an adequate return; many will be moved by self-interest, a few by nobler motives. To all these Liberia eagerly opens her arms. The pressure in America finds an efficient safety-valve in the colonization of Africa.

With such additions to her strength, the resources of Liberia will be brought out and developed. Communication with America will be made easier and cheaper. The toiling masses left behind will have before them the constant example of numbers of their race living in comfort and increasing prosperity under their own government. Many will become eager to secure the same advantages, and gradually a migration will begin that will carry hundreds of thousands from the house of bondage to the promised land.

It is absurd to declaim about "expatriation" and to declare such a movement forced and unnatural. The whole course of history reveals men leaving their homes under pressure of one cause or another, and striking out into new fields. The western course of migration has reached its uttermost limit, and the tide must turn in other directions. One vast and rich continent remains; upon it the eyes of the world are fixed. Already the aggressive Aryan has established himself wherever he can

gain a foothold; but the greater part of the country is forever barred to him by a climate which he cannot subdue.

To whom then can this rich territory offer greater inducements than to the colored people of the United States? And what is more natural and rational than that they, when the population of the country approaches the migration point, should follow the line of least resistance and turn their steps to the home of their forefathers.

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XI–XII

THE CHARACTER AND INFLUENCE OF THE INDIAN TRADE IN WISCONSIN

"The history of commerce is the history of the intercommunication of peoples."—*Montesquieu.*

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History is past Politics and Politics present History.—*Freeman*

NINTH SERIES

XI–XII

The Character and Influence of the Indian Trade in Wisconsin

A Study of the Trading Post as an Institution

BY FREDERICK J. TURNER, PH. D.

Professor of History, University of Wisconsin

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TABLE OF CONTENTS.

PAGE.

I. Introduction 7
II. Primitive Inter-Tribal Trade 10
III. Place of the Indian Trade in the Settlement of America 11
1. Early Trade along the Atlantic Coast 11
2. In New England 12
3. In the Middle Region 13
4. In the South 16
5. In the Far West 18
IV. The River and Lake Systems of the Northwest 19
V. Wisconsin Indians 22
VI. Periods of the Wisconsin Indian Trade 25
VII. French Exploration in Wisconsin 26
VIII. French Posts in Wisconsin 33
IX. The Fox Wars 34
X. French Settlement in Wisconsin 38
XI. The Traders' Struggle to Retain their Trade 40
XII. The English and the Northwest. Influence of the Indian Trade on Diplomacy 42
XIII. The Northwest Company 51
XIV. American Influences 51
XV. Government Trading Houses 58
XVI. Wisconsin Trade in 1820 61
XVII. Effects of the Trading Post 67

THE CHARACTER AND INFLUENCE OF THE INDIAN TRADE IN WISCONSIN.

Introduction.[1]

The trading post is an old and influential institution. Established in the midst of an undeveloped society by a more advanced people, it is a center not only of new economic influences, but also of all the transforming forces that accompany the intercourse of a higher with a lower civilization. The Phœnicians developed the institution into a great historic agency. Closely associated with piracy at first, their commerce gradually freed itself from this and spread throughout the Mediterranean lands. A passage in the Odyssey (Book XV.) enables us to trace the genesis of the Phœnician trading post:

"Thither came the Phœnicians, mariners renowned, greedy merchant-men with countless trinkets in a black ship. . . . . They abode among us a whole year, and got together much wealth in their hollow ship. And when their hollow ship was now laden to depart, they sent a messenger. . . . . There

[1] In this paper I have rewritten and enlarged an address before the State Historical Society of Wisconsin on the Character and Influence of the Fur Trade in Wisconsin, published in the Proceedings of the Thirty-sixth Annual Meeting, 1889. I am under obligations to Mr. Reuben G. Thwaites, Secretary of this society, for his generous assistance in procuring material for my work, and to Professor Charles H. Haskins, my colleague, who kindly read both manuscript and proof and made helpful suggestions. The reader will notice that throughout the paper I have used the word *Northwest* in a limited sense as referring to the region included between the Great Lakes and the Ohio and Mississippi rivers.

came a man versed in craft to my father's house with a golden chain strung here and there with amber beads. Now, the maidens in the hall and my lady mother were handling the chain and gazing on it and offering him their price."

It would appear that the traders at first sailed from port to port, bartering as they went. After a time they stayed at certain profitable places a twelvemonth, still trading from their ships. Then came the fixed factory, and about it grew the trading colony.[1] The Phœnician trading post wove together the fabric of oriental civilization, brought arts and the alphabet to Greece, brought the elements of civilization to northern Africa, and disseminated eastern culture through the Mediterranean system of lands. It blended races and customs, developed commercial confidence, fostered the custom of depending on outside nations for certain supplies, and afforded a means of peaceful intercourse between societies naturally hostile.

Carthaginian, Greek, Etruscan and Roman trading posts continued the process. By traffic in amber, tin, furs, etc., with the tribes of the north of Europe, a continental commerce was developed. The routes of this trade have been ascertained.[2] For over a thousand years before the migration of the peoples Mediterranean commerce had flowed along the interlacing river valleys of Europe, and trading posts had been established. Museums show how important an effect was produced upon the economic life of northern Europe by this intercourse. It is a significant fact that the routes of the migration of the peoples were to a considerable extent the routes of Roman trade, and it is well worth inquiry whether this commerce did not leave more traces

[1] On the trading colony, see Roscher und Jannasch, Colonien, p. 12.

[2] Consult: Müllenhoff, Altertumskunde I., 212; Schrader, Prehistoric Antiquities of the Aryan Peoples, New York, 1890, pp. 348ff.; Pliny, Naturalis Historia, xxvii., 11; Montelius, Civilization of Sweden in Heathen Times, 98–99; Du Chaillu, Viking Age; and the citations in Dawkins, Early Man in Britain, 466–7; Keary, Vikings in Western Christendom, 23.

upon Teutonic society than we have heretofore considered, and whether one cause of the migrations of the peoples has not been neglected.[1]

That stage in the development of society when a primitive people comes into contact with a more advanced people deserves more study than has been given to it. As a factor in breaking the "cake of custom" the meeting of two such societies is of great importance; and if, with Starcke,[2] we trace the origin of the family to economic considerations, and, with Schrader,[3] the institution of guest friendship to the same source, we may certainly expect to find important influences upon primitive society arising from commerce with a higher people. The extent to which such commerce has affected all peoples is remarkable. One may study the process from the days of Phœnicia to the days of England in Africa,[4] but nowhere is the material more abundant than in the history of the relations of the Europeans and the American Indians. The Phœnician factory, it is true, fostered the development of the Mediterranean civilization, while in America the trading post exploited the natives. The explanation of this difference is to be sought partly in race differences, partly in the greater gulf that separated the civilization of the European from the civilization of the American Indian as compared with that which parted the early Greeks and the Phœnicians. But the study of the destructive effect of the trading post is valuable as well as the study of its elevating influences; in both cases the effects are important and worth investigation and comparison.

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[1] In illustration it may be noted that the early Scandinavian power in Russia seized upon the trade route by the Dnieper and the Duna. Keary, Vikings, 173. See also *post*, pp. 36, 38.

[2] Starcke, Primitive Family.

[3] Schrader, l. c.; see also Ihring, in *Deutsche Rundschau*, III., 357, 420; Kulischer, Der Handel auf primitiven Kulturstufen, in *Zeitschrift für Völkerpsychologie und Sprachwissenschaft*, X., 378. *Vide post*, p. 10.

[4] W. Bosworth Smith, in a suggestive article in the *Nineteenth Century*, December, 1887, shows the influence of the Mohammedan trade in Africa.

Primitive Inter-Tribal Trade.

Long before the advent of the white trader, inter-tribal commercial intercourse existed. Mr. Charles Rau[1] and Sir Daniel Wilson[2] have shown that inter-tribal trade and division of labor were common among the mound-builders and in the stone age generally. In historic times there is ample evidence of inter-tribal trade. Were positive evidence lacking, Indian institutions would disclose the fact. Differences in language were obviated by the sign language,[3] a fixed system of communication, intelligible to all the western tribes at least. The peace pipe,[4] or calumet, was used for settling disputes, strengthening alliances, and speaking to strangers—a sanctity attached to it. Wampum belts served in New England and the middle region as money and as symbols in the ratification of treaties.[5] The Chippeways had an institution called by a term signifying "to enter one another's lodges,"[6] whereby a truce was made between them and the Sioux at the winter hunting season. During these seasons of peace it was not uncommon for a member of one tribe to adopt a member of another as his brother, a tie which was respected even after the expiration of the truce. The analogy of this custom to the classical "guest-friendship" needs no comment; and the economic cause of the institution is worth remark, as one of the means by which the rigor of primitive inter-tribal hostility was mitigated.

But it is not necessary to depend upon indirect evidence. The earliest travellers testify to the existence of a wide inter-tribal commerce. The historians of De Soto's expedition

[1] Smithsonian Report, 1872.

[2] Transactions of the Royal Society of Canada, 1889, VII., 59. See also Thruston, Antiquities of Tennessee, 79 ff.

[3] Mallery, in Bureau of Ethnology, I., 324; Clark, Indian Sign Language.

[4] Shea, Discovery of the Mississippi, 34. Catilinite pipes were widely used, even along the Atlantic slope, Thruston, 80–81.

[5] Weeden, Economic and Social History of New England, I., ch. ii.

[6] Minnesota Historical Collections, V., 267.

mention Indian merchants who sold salt to the inland tribes. "In 1565 and for some years previous bison skins were brought by the Indians down the Potomac, and thence carried along-shore in canoes to the French about the Gulf of St. Lawrence. During two years six thousand skins were thus obtained."[1] An Algonquin brought to Champlain at Quebec a piece of copper a foot long, which he said came from a tributary of the Great Lakes.[2] Champlain also reports that among the Canadian Indians village councils were held to determine what number of men might go to trade with other tribes in the summer.[3] Morton in 1632 describes similar inter-tribal trade in New England, and adds that certain utensils are "but in certain parts of the country made, where the severall trades are appropriated to the inhabitants of those parts onely."[4] Marquette relates that the Illinois bought firearms of the Indians who traded directly with the French, and that they went to the south and west to carry off slaves, which they sold at a high price to other nations.[5] It was on the foundation, therefore, of an extensive inter-tribal trade that the white man built up the forest commerce.[6]

Early Trade along the Atlantic Coast.

The chroniclers of the earliest voyages to the Atlantic coast abound in references to this traffic. First of Europeans to purchase native furs in America appear to have been the Norsemen who settled Vinland. In the saga of Eric the Red[7] we find this interesting account: "Thereupon

[1] Parkman, Pioneers of France in the New World, 230, citing Menendez.

[2] Neill, in Narrative and Critical History of America, IV., 164.

[3] Champlain's Voyages (Prince Society), III., 183.

[4] Morton, New English Canaan (Prince Society), 159.

[5] Shea, Discovery and Exploration of the Mississippi Valley, 32.

[6] For additional evidence see Radisson, Voyages (Prince Society), 91, 173; Massachusetts Historical Collections, I., 151; Smithsonian Contributions, XVI., 30; Jesuit Relations, 1671, 41; Thruston, Antiquities, etc., 79–82; Carr, Mounds of the Mississippi Valley, 25, 27; and *post* pp. 26–7, 36.

[7] Reeves, Finding of Wineland the Good, 47.

Karlsefni and his people displayed their shields, and when they came together they began to barter with each other. Especially did the strangers wish to buy red cloth, for which they offered in exchange peltries and quite grey skins. They also desired to buy swords and spears, but Karlsefni and Snorri forbade this. In exchange for perfect unsullied skins the Skrellings would take red stuff a span in length, which they would bind around their heads. So their trade went on for a time, until Karlsefni and his people began to grow short of cloth, when they divided it into such narrow pieces that it was not more than a finger's breadth wide, but the Skrellings still continued to give just as much for this as before, or more."

The account of Verrazano's voyage[1] mentions his Indian trade. Captain John Smith, exploring New England in 1614, brought back a cargo of fish and 11,000 beaver skins.[2] These examples could be multiplied; in short, a way was prepared for colonization by the creation of a demand for European goods, and thus the opportunity for a lodgement was afforded.

New England Indian Trade.

The Indian trade has a place in the early history of the New England colonies. The Plymouth settlers "found divers corn fields and little running brooks, a place . . . . fit for situation,"[3] and settled down cuckoo-like in Indian clearings. Mr. Weeden has shown that the Indian trade furnished a currency (wampum) to New England, and that it afforded the beginnings of her commerce. In September of their first year the Plymouth men sent out a shallop to trade with the Indians, and when a ship arrived from England in 1621 they speedily loaded her with a return

[1] N. Y. Hist. Colls., I., 54-55, 59.

[2] Smith, Generall Historie (Richmond, 1819), I., 87-8, 182, 199; Strachey's Travaile into Virginia, 157 (Hakluyt Soc. VI.); Parkman, Pioneers, 230.

[3] Bradford, Plymouth Plantation.

cargo of beaver and lumber.[1] By frequent legislation the colonies regulated and fostered the trade.[2] Bradford reports that in a single year twenty hhd. of furs were shipped from Plymouth, and that between 1631 and 1636 their shipments amounted to 12,150 *li.* beaver and 1156 *li.* otter.[3] Morton in his 'New English Canaan' alleges that a servant of his was "thought to have a thousand pounds in ready gold gotten by the beaver when he died."[4] In the pursuit of this trade men passed continually farther into the wilderness, and their trading posts "generally became the pioneers of new settlements."[5] For example, the posts of Oldham, a Puritan trader, led the way for the settlements on the Connecticut river,[6] and in their early days these towns were partly sustained by the Indian trade.[7]

Not only did the New England traders expel the Dutch from this valley; they contended with them on the Hudson.[8]

Indian Trade in the Middle Colonies.

Morton, in the work already referred to, protested against allowing "the Great Lake of the Erocoise" (Champlain) to the Dutch, saying that it is excellent for the fur trade, and that the Dutch have gained by beaver 20,000 pounds a year. Exaggerated though the statement is, it is true that the energies of the Dutch were devoted to this trade, rather than to agricultural settlement. As in the case of New

[1] Bradford, 104.

[2] *E. g.*, Plymouth Records, I., 50, 54, 62, 119; II., 10; Massachusetts Colonial Records, I., 55, 81, 96, 100, 322; II., 86, 138; III., 424; V., 180; Hazard, Historical Collections, II., 19 (the Commissioners of the United Colonies propose giving the monopoly of the fur trade to a corporation). On public truck-houses, *vide post*, p. 58.

[3] Bradford, 108, gives the proceeds of the sale of these furs.

[4] Force, Collections, Vol. I., No. 5, p. 53.

[5] Weeden, I., 132, 160–1.

[6] Winthrop, History of New England, I., 111, 131.

[7] Connecticut Colonial Records, 1637, pp. 11, 18.

[8] Weeden, I., 126.

France the settlers dispersed themselves in the Indian trade; so general did this become that laws had to be passed to compel the raising of crops.[1] New York City (New Amsterdam) was founded and for a time sustained by the fur trade. In their search for peltries the Dutch were drawn up the Hudson, up the Connecticut, and down the Delaware, where they had Swedes for their rivals. By way of the Hudson the Dutch traders had access to Lake Champlain, and to the Mohawk, the headwaters of which connected through the lakes of western New York with Lake Ontario. This region, which was supplied by the trading post of Orange (Albany), was the seat of the Iroquois confederacy. The results of the trade upon Indian society became apparent in a short time in the most decisive way. Furnished with arms by the Dutch, the Iroquois turned upon the neighboring Indians, whom the French had at first refrained from supplying with guns.[2] In 1649 they completely ruined the Hurons,[3] a part of whom fled to the woods of northern Wisconsin. In the years immediately following, the Neutral Nation and the Eries fell under their power; they overawed the New England Indians and the Southern tribes, and their hunting and war parties visited Illinois and drove Indians of those plains into Wisconsin. Thus by priority in securing firearms, as well as by their remarkable civil organization,[4] the Iroquois secured possession of the St. Lawrence and Lakes Ontario and Erie. The French had accepted the alliance of the Algonquins and the Hurons, as the Dutch, and afterward the English, had that of the Iroquois; so these victories of the Iroquois cut the French off from the entrance to the Great Lakes by way of the upper St. Lawrence. As early as 1629 the Dutch trade was estimated at 50,000 guilders

[1] New York Colonial Documents, I., 181, 389, §7.

[2] *Ibid.* 182; Collection de manuscrits relatifs à la Nouvelle-France, I., 254; Radisson, 93.

[3] Parkman, Jesuits in North America; Radisson; Margry, Découvertes et Établissemens, etc., IV., 586–598; Tailhan, Nicholas Perrot.

[4] Morgan, League of the Iroquois.

per annum, and the Delaware trade alone produced 10,000 skins yearly in 1663.[1] The English succeeded to this trade, and under Governor Dongan they made particular efforts to extend their operations to the Northwest, using the Iroquois as middlemen. Although the French were in possession of the trade with the Algonquins of the Northwest, the English had an economic advantage in competing for this trade in the fact that Albany traders, whose situation enabled them to import their goods more easily than Montreal traders could, and who were burdened with fewer governmental restrictions, were able to pay fifty per cent more for beaver and give better goods. French traders frequently received their supplies from Albany, a practice against which the English authorities legislated in 1720; and the *coureurs de bois* smuggled their furs to the same place.[2] As early as 1666 Talon proposed that the king of France should purchase New York, "whereby he would have two entrances to Canada and by which he would give to the French all the peltries of the north, of which the English share the profit by the communication which they have with the Iroquois by Manhattan and Orange."[3] It is a characteristic of the fur trade that it continually recedes from the original center, and so it happened that the English traders before long attempted to work their way into the Illinois country. The wars between the French and English and Iroquois must be read in the light of this fact. At the outbreak of the last

[1] N. Y. Col. Docs., IX., 408–9; V., 687, 726; Histoire et Commerce des Colonies Angloises, 154.

[2] N. Y. Col. Docs., III., 471, 474; IX., 298, 319.

[3] *Ibid.* IX., 57. The same proposal was made in 1681 by Du Chesneau, *ibid.* IX., 165.

[4] Parkman's works; N. Y. Col. Docs., IX., 165; Shea's Charlevoix, IV., 16: "The English, indeed, as already remarked, from that time shared with the French in the fur trade; and this was the chief motive of their fomenting war between us and the Iroquois, inasmuch as they could get no good furs, which come from the northern districts, except by means of these Indians, who could scarcely effect a reconciliation with us without precluding them from this precious mine."

French and Indian war, however, it was rather Pennsylvania and Virginia traders who visited the Ohio Valley. It is said that some three hundred of them came over the mountains yearly, following the Susquehanna and the Juniata and the headwaters of the Potomac to the tributaries of the Ohio, and visiting with their pack-horses the Indian villages along the valley. The center of the English trade was Pickawillani on the Great Miami. In 1749 Celoron de Bienville, who had been sent out to vindicate French authority in the valley, reported that each village along the Ohio and its branches "has one or more English traders, and each of these has hired men to carry his furs."[1]

Indian Trade in the Southern Colonies.

The Indian trade of the Virginians was not limited to the Ohio country. As in the case of Massachusetts Bay, the trade had been provided for before the colony left England,[2] and in times of need it had preserved the infant settlement. Bacon's rebellion was in part due to the opposition to the governor's trading relations with the savages. After a time the nearer Indians were exploited, and as early as the close of the seventeenth century Virginia traders sought the Indians west of the Alleghanies.[3] The Cherokees lived among the mountains, "where the present states of Tennessee, Alabama, Georgia, and the Carolinas join one another."[4] To the west, on the Mississippi, were the Chickasaws, south of whom lived the Choctaws, while to the south of the Cherokees were the Creeks. The Catawbas had their villages on the border of North and South Carolina, about the headwaters of the Santee river. Shawnese Indians had formerly lived on the Cumberland river, and French traders had been among them, as well as along the Missis-

[1] Parkman, Montcalm and Wolfe, I., 50.

[2] Charter of 1606.

[3] Ramsay, Tennessee, 63.

[4] On the Southwestern Indians see Adair, American Indians.

sippi;[1] but by the time of the English traders, Tennessee and Kentucky were for the most part uninhabited. The Virginia traders reached the Catawbas, and for a time the Cherokees, by a trading route through the southwest of the colony to the Santee. By 1712 this trade was a well-established one,[2] and caravans of one hundred pack-horses passed along the trail.[3]

The Carolinas had early been interested in the fur trade. In 1663 the Lords Proprietors proposed to pay the governor's salary from the proceeds of the traffic. Charleston traders were the rivals of the Virginians in the southwest. They passed even to the Choctaws and Chickasaws, crossing the rivers by portable boats of skin, and sometimes taking up a permanent abode among the Indians. Virginia and Carolina traders were not on good terms with each other, and Governor Spottswood frequently made complaints of the actions of the Carolinians. His expedition across the mountains in 1716, if his statement is to be trusted, opened a new way to the transmontane Indians, and soon afterwards a trading company was formed under his patronage to avail themselves of this new route.[4] It passed across the Blue Ridge into the Shenandoah valley, and down the old Indian trail to the Cherokees, who lived along the upper Tennessee. Below the bend at the Muscle Shoals the Virginians met the competition of the French traders from New Orleans and Mobile.[5]

The settlement of Augusta, Georgia, was another important trading post. Here in 1740 was an English garrison of fifteen or twenty soldiers, and a little band of traders, who annually took about five hundred pack-horses into the Indian country. In the spring the furs were floated down

[1] Ramsay, 75.

[2] Spottswood's Letters, Virginia Hist. Colls., N. S., I., 67.

[3] Byrd Manuscripts, I., 180. The reader will find a convenient map for the southern region in Roosevelt, Winning of the West, I.

[4] Spottswood's Letters, I., 40; II., 149, 150.

[5] Ramsay, 64. Note the bearing of this route on the Holston settlement.

the river in large boats.[1] The Spaniards and the French also visited the Indians, and the rivalry over this trade was an important factor in causing diplomatic embroilment.[2]

The occupation of the back-lands of the South affords a prototype of the process by which the plains of the far West were settled, and also furnishes an exemplification of all the stages of economic development existing contemporaneously. After a time the traders were accompanied to the Indian grounds by *hunters*, and sometimes the two callings were combined.[3] When Boone entered Kentucky he went with an Indian trader whose posts were on the Red river in Kentucky.[4] After the game decreased the hunter's clearing was occupied by the *cattle-raiser*, and his home, as settlement grew, became the property of the *cultivator of the soil;*[5] the *manufacturing era* belongs to our own time.

In the South, the Middle Colonies and New England the trade opened the water-courses, the trading post grew into the palisaded town, and rival nations sought to possess the trade for themselves. Throughout the colonial frontier the effects, as well as the methods, of Indian traffic were strikingly alike. The trader was the pathfinder for civilization. Nor was the process limited to the east of the Mississippi. The expeditions of Verenderye led to the discovery of the Rocky Mountains.[6] French traders passed up the Missouri; and when the Lewis and Clarke expedition ascended that river and crossed the continent, it went with traders and voyageurs as guides and interpreters. Indeed, Jefferson first conceived the idea of such an expedition[7] from contact with Ledyard, who was organizing a fur trading company in

[1] Georgia Historical Collections, I., 180; II., 123–7.

[2] Spottswood, II., 331, for example.

[3] Ramsay, 65.

[4] Boone, Life and Adventures.

[5] Observations on the North American Land Co., pp. xv., 144, London, 1796.

[6] Margry, VI.

[7] Allen, Lewis and Clarke Expedition, I., ix.; *vide post*, pp. 70–71.

France, and it was proposed to Congress as a means of fostering our western Indian trade.[1] The first immigrant train to California was incited by the representations of an Indian trader who had visited the region, and it was guided by trappers.[2]

St. Louis was the center of the fur trade of the far West, and Senator Benton was intimate with leading traders like Chouteau.[3] He urged the occupation of the Oregon country, where in 1810 an establishment had for a time been made by the celebrated John Jacob Astor; and he fostered legislation opening the road to the southwestern Mexican settlements long in use by the traders. The expedition of his son-in-law Frémont was made with French voyageurs, and guided to the passes by traders who had used them before.[4] Benton was also one of the stoutest of the early advocates of a Pacific railway.

But the Northwest[5] was particularly the home of the fur trade, and having seen that this traffic was not an isolated or unimportant matter, we may now proceed to study it in detail with Wisconsin as the field of investigation.

Northwestern River Systems in their Relation to the Fur Trade.

The importance of physical conditions is nowhere more manifest than in the exploration of the Northwest, and we cannot properly appreciate Wisconsin's relation to the history of the time without first considering her situation as regards the lake and river systems of North America.

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[1] *Vide post*, p. 71.

[2] *Century Magazine*, XLI., 759.

[3] Jessie Benton Frémont in *Century Magazine*, XLI., 766–7.

[4] *Century Magazine*, XLI., p. 759; *vide post*, p. 74.

[5] Parkman's works, particularly Old Régime, make any discussion of the importance of the fur trade to Canada proper unnecessary. La Hontan says: "For you must know that Canada subsists only upon the trade of skins or furs, three-fourths of which come from the people that live around the Great Lakes." La Hontan, I., 53, London, 1703.

When the Breton sailors, steering their fishing smacks almost in the wake of Cabot, began to fish in the St. Lawrence gulf, and to traffic with the natives of the mainland for peltries, the problem of how the interior of North America was to be explored was solved. The water-system composed of the St. Lawrence and the Great Lakes is the key to the continent. The early explorations in a wilderness must be by water-courses—they are nature's highways. The St. Lawrence leads to the Great Lakes; the headwaters of the tributaries of these lakes lie so near the headwaters of the rivers that join the Mississippi that canoes can be portaged from the one to the other. The Mississippi affords passage to the Gulf of Mexico; or by the Missouri to the passes of the Rocky Mountains, where rise the headwaters of the Columbia, which brings the voyageur to the Pacific. But if the explorer follows Lake Superior to the present boundary line between Minnesota and Canada, and takes the chain of lakes and rivers extending from Pigeon river to Rainy lake and Lake of the Woods, he will be led to the Winnipeg river and to the lake of the same name. From this, by streams and portages, he may reach Hudson bay; or he may go by way of Elk river and Lake Athabasca to Slave river and Slave lake, which will take him to Mackenzie river and to the Arctic sea. But Lake Winnipeg also receives the waters of the Saskatchewan river, from which one may pass to the highlands near the Pacific where rise the northern branches of the Columbia. And from the lakes of Canada there are still other routes to the Oregon country.[1] At a later day these two routes to the Columbia became an important factor in bringing British and Americans into conflict over that territory.

In these water-systems Wisconsin was the link that joined the Great Lakes and the Mississippi; and along her northern shore the first explorers passed to the Pigeon river, or, as it was called later, the Grand Portage route, along the bound-

[1] Narr. and Crit. Hist. Amer., VIII., 10–11.

ary line between Minnesota and Canada into the heart of Canada.

It was possible to reach the Mississippi from the Great Lakes by the following principal routes:[1]

1. By the Miami (Maumee) river from the west end of Lake Erie to the Wabash, thence to the Ohio and the Mississippi.

2. By the St. Joseph's river to the Wabash, thence to the Ohio.

3. By the St. Joseph's river to the Kankakee, and thence to the Illinois and the Mississippi.

4. By the Chicago river to the Illinois.

5. By Green bay, Fox river, and the Wisconsin river.

6. By the Bois Brulé river to the St. Croix river.

Of these routes, the first two were not at first available, owing to the hostility of the Iroquois.

Of all the colonies that fell to the English, as we have seen, New York alone had a water-system that favored communication with the interior, tapping the St. Lawrence and opening a way to Lake Ontario. Prevented by the Iroquois friends of the Dutch and English from reaching the Northwest by way of the lower lakes, the French ascended the Ottawa, reached Lake Nipissing, and passed by way of Georgian Bay to the islands of Lake Huron. As late as the nineteenth century this was the common route of the fur trade, for it was more certain for the birch canoes than the tempestuous route of the lakes. At the Huron islands two ways opened before their canoes. The straits of Michillimackinac[2] permitted them to enter Lake Michigan, and from this led the two routes to the Mississippi: one by way of Green bay and the Fox and Wisconsin, and the other by way of the lake to the Chicago river. But if the trader chose to go from the Huron islands through Sault Ste. Marie

[1] Narr. and Crit. Hist. Amer., IV., 224, n. 1; Margry, V. See also Parkman, Montcalm and Wolfe, I., map and pp. 38–9, 128.

[2] Mackinaw.

into Lake Superior, the necessities of his frail craft required him to hug the shore, and the rumors of copper mines induced the first traders to take the south shore, and here the lakes of northern Wisconsin and Minnesota afford connecting links between the streams that seek Lake Superior and those that seek the Mississippi,[1] a fact which made northern Wisconsin more important in this epoch than the southern portion of the state.

We are now able to see how the river-courses of the Northwest permitted a complete exploration of the country, and that in these courses Wisconsin held a commanding situation.[2] But these rivers not only permitted exploration; they also furnished a motive to exploration by the fact that their valleys teemed with fur-bearing animals. This is the main fact in connection with Northwestern exploration. The hope of a route to China was always influential, as was also the search for mines, but the practical inducements were the profitable trade with the Indians for beaver and buffaloes and the wild life that accompanied it. So powerful was the combined influence of these far-stretching rivers, and the "hardy, adventurous, lawless, fascinating fur trade," that the scanty population of Canada was irresistibly drawn from agricultural settlements into the interminable recesses of the continent; and herein is a leading explanation of the lack of permanent French influence in America.

Wisconsin Indians.[3]

"All that relates to the Indian tribes of Wisconsin," says Dr. Shea, "their antiquities, their ethnology, their history, is deeply interesting from the fact that it is the area of the

[1] See Doty's enumeration, Wis. Hist. Colls., VII., 202.

[2] Jes. Rels., 1672, p. 37; La Hontan, I., 105 (1703).

[3] On these early locations, consult the authorities cited by Shea in Wis. Hist. Colls., III., 125 *et seq.*, and by Brunson in his criticism on Shea, *ibid.* IV., 223. See also Butterfield's Discovery of the Northwest in 1634, and *Mag. West. Hist.*, V., 468, 630; and Minn. Hist. Colls., V.

first meeting of the Algic and Dakota tribes. Here clans of both these wide-spread families met and mingled at a very early period; here they first met in battle and mutually checked each other's advance." The Winnebagoes attracted the attention of the French even before they were visited. They were located about Green bay. Their later location at the entrance of Lake Winnebago was unoccupied, at least in the time of Allouez, because of the hostility of the Sioux. Early authorities represented them as numbering about one hundred warriors.[1] The Pottawattomies we find in 1641 at Sault Ste. Marie,[2] whither they had just fled from their enemies. Their proper home was probably about the southeastern shore and islands of Green bay, where as early as 1670 they were again located. Of their numbers in Wisconsin at this time we can say but little. Allouez, at Chequamegon bay, was visited by 300 of their warriors, and he mentions some of their Green bay villages, one of which had 300 souls.[3] The Menomonees were found chiefly on the river that bears their name, and the western tributaries of Green bay seem to have been their territory. On the estimates of early authorities we may say that they had about 100 warriors.[4] The Sauks and Foxes were closely allied tribes. The Sauks were found by Allouez[5] four leagues[6] up the Fox from its mouth, and the Foxes at a place reached by a four days' ascent of the Wolf river from its mouth. Later we find them at the confluence of the Wolf and the Fox. According to their early visitors these two

[1] Some early estimates were as follows: 1640, "Great numbers" (Margry, I., 48); 1718, 80 to 100 warriors (N. Y. Col. Docs., IX., 889); 1728, 60 or 80 warriors (Margry, VI., 553); 1736, 90 warriors (Chaurignerie, cited in Schoolcraft's Indian Tribes, III., 282); 1761, 150 warriors (Gorrell, Wis. Hist. Colls., I., 32).

[2] Margry, I., 46.

[3] Jes. Rels., 1667, 1670.

[4] 1718, estimated at 80 to 100 warriors (N. Y. Col. Docs., IX., 889); 1762, estimated at 150 warriors (Gorrell, Wis. Hist. Colls., I., 32).

[5] Jes. Rels., 1670.

[6] French leagues.

tribes must have had something over 1000 warriors.[1] The Miamis and Mascoutins were located about a league from the Fox river, probably within the limits of what is now Green Lake county,[2] and four leagues away were their friends the Kickapoos. In 1670 the Miamis and Mascoutins were estimated at 800 warriors, and this may have included the Kickapoos. The Sioux held possession of the Upper Mississippi, and in Wisconsin hunted on its northeastern tributaries. Their villages were in later times all on the west of the Mississippi, and of their early numbers no estimate can be given. The Chippeways were along the southern shore of Lake Superior. Their numbers also are in doubt, but were very considerable.[3] In northwestern Wisconsin, with Chequamegon bay as their rendezvous, were the Ottawas and Hurons,[4] who had fled here to escape the Iroquois. In 1670 they were back again to their homes at Mackinaw and the Huron islands. But in 1666, as Allouez tells us, they were situated at the bottom of this beautiful bay, planting their Indian corn and leading a stationary life. "They are there," he says, "to the number of eight hundred men bearing arms, but collected from seven different nations who dwell in peace with each other thus mingled together."[5] And the Jesuit Relations of 1670 add that the Illinois "come here from time to time in great numbers as merchants to procure hatchets, cooking utensils, guns, and other things of which they stand in need." Here, too, came Pottawattomies, as we have seen, and Sauks.

[1] 1670, Foxes estimated at 400 warriors (Jes. Rels., 1670); 1667, Foxes, 1000 warriors (Jes. Rels., 1667); 1695, Foxes and Mascoutins, 1200 warriors (N. Y. Col. Docs., IX., 633); 1718, Sauks 100 or 120, Foxes 500 warriors (2 Penn. Archives, VI., 54); 1728, Foxes, 200 warriors (Margry, V.); 1762, Sauks and Foxes, 700 warriors (Gorrell, Wis. Hist. Colls., I., 32). This, it must be observed, was after the Fox wars.

[2] Jes. Rels., 1670; Butterfield's Discovery of the Northwest.

[3] In 1820 those in Wisconsin numbered about 600 hunters.

[4] On these Indians consult, besides authorities already cited, Shea's Discovery, etc. lx.; Jes. Rels.; Narr. and Crit. Hist. of Amer., IV., 168–170, 175; Radisson's Voyages; Margry, IV., 586–598.

[5] Jes. Rels., 1666–7.

At the mouth of Fox river[1] we find another mixed village of Pottawattomies, Sauks, Foxes, and Winnebagoes, and at a later period Milwaukee was the site of a similar heterogeneous community. Leaving out the Hurons, the tribes of Wisconsin were, with two exceptions, of the Algic stock. The exceptions are the Winnebagoes and the Sioux, who belong to the Dakota family. Of these Wisconsin tribes it is probable that the Sauks and Foxes, the Pottawattomies, the Hurons and Ottawas and the Mascoutins, and Miamis and Kickapoos, were driven into Wisconsin by the attacks of eastern enemies. The Iroquois even made incursions as far as the home of the Mascoutins on Fox river. On the other side of the state were the Sioux, "the Iroquois of the West," as the missionaries call them, who had once claimed all the region, and whose invasions, Allouez says, rendered Lake Winnebago uninhabited. There was therefore a pressure on both sides of Wisconsin which tended to mass together the divergent tribes. And the Green bay and Fox and Wisconsin route was the line of least resistance, as well as a region abounding in wild rice, fish and game, for these early fugitives. In this movement we have two facts that are not devoid of significance in institutional history: first, the welding together of separate tribes, as the Sauks and Foxes, and the Miamis, Mascoutins and Kickapoos; and second, a commingling of detached families from various tribes at peculiarly favorable localities.

Periods of the Wisconsin Indian Trade.

The Indian trade was almost the sole interest in Wisconsin during the two centuries that elapsed from the visit of Nicolet in 1634 to about 1834, when lead-mining had superseded it in the southwest and land offices were opened at Green Bay and Mineral Point; when the port of Milwaukee received an influx of settlers to the lands made known by the so-called

[1] Jes. Rels., 1670.

Black Hawk war; and when Astor retired from the American Fur Company. These two centuries may be divided into three periods of the trade: 1. French, from 1634 to 1763; 2. English, from 1763 to 1816; 3. American, from 1816 to 1834.

French Exploration in Wisconsin.

Sagard,[1] whose work was published in 1636, tells us that the Hurons, who traded with the French, visited the Winnebagoes and the Fire Nation (Mascoutins),[2] bartering goods for peltries. Champlain, the famous fur-trader, who represented the Company of the Hundred Associates,[3] formed by Richelieu to monopolize the fur trade of New France and govern the country, sent an agent named Jean Nicolet, in 1634,[4] to Green bay and Fox river to make a peace between the Hurons and the Winnebagoes in the interests of inter-tribal commerce. The importance of this phase of the trade as late as 1681 may be inferred from these words of Du Chesneau, speaking of the Ottawas, and including under the term the Petun Hurons and the Chippeways also: "Through them we obtain beaver, and although they, for the most part, do not hunt, and have but a small portion of peltry in their country, they go in search of it to the most distant places, and exchange for it our merchandise which they procure at Montreal." Among the tribes enumerated as dealing with the Ottawas are the Sioux, Sauks, Pottawattomies, Winnebagoes, Menomonees and Mascoutins—all Wisconsin Indians at this time. He adds: "Some of these tribes occasionally come down to Montreal, but usually they do not do so in very great numbers because they are too far distant, are not expert at managing canoes, and because the other Indians intimidate

[1] Histoire du Canada, 193–4 (edition of 1866).

[2] Dablon, Jesuit Relations, 1671.

[3] See Parkman, Pioneers, 429 ff. (1890).

[4] Margry, I., 50. The date rests on inference; see Bibliography of Nicolet in Wis. Hist. Colls., XI., and cf. Hebberd, Wisconsin under French Dominion, 14.

them, in order to be the carriers of their merchandise and to profit thereby."[1]

It was the aim of the authorities to attract the Indians to Montreal, or to develop the inter-tribal communication, and thus to centralize the trade and prevent the dissipation of the energies of the colony; but the temptations of the free forest traffic were too strong. In a memoir of 1697, Aubert de la Chesnaye says:

"At first the French went only among the Hurons, and since then to Missilimakinak, where they sold their goods to the savages of the places, who in turn went to exchange them with other savages in the depths of the woods, lands and rivers. But at present the French, having licenses, in order to secure greater profit surreptitiously, pass all the Ottawas and savages of Missilimakinak in order to go themselves to seek the most distant tribes, which is very displeasing to the former. *It is they, also, who have made excellent discoveries;* and four or five hundred young men, the best men of Canada, are engaged in this business. . . . They have given us knowledge of many names of savages that we did not know; and four or five hundred leagues more remote are others who are unknown to us."[2]

Two of the most noteworthy of these *coureurs de bois*, or wood-rangers, were Radisson and Groseilliers.[3] In 1660 they returned to Montreal with 300 Algonquins and sixty canoes laden with furs, after a voyage in which they visited, among other tribes, the Pottawattomies, Mascoutins, Sioux, and Hurons, in Wisconsin. From the Hurons they learned of the Mississippi, and probably visited the river. They soon returned from Montreal to the northern Wisconsin region. In the course of their wanderings they had a post at Chequa-

[1] N. Y. Col. Docs., IX., 160.

[2] Margry, VI., 3; Coll. de Manuscrits, I., 255, where the date is wrongly given as 1676. The italics are ours.

[3] Radisson, Voyages (Prince Soc. Pubs.); Margry, I., 53–55, 83; Jes. Rels., 1660; Wis. Hist. Colls., X., XI; Narrative and Critical Hist. Amer., IV., 168–173.

megon bay, and they ascended the Pigeon river, thus opening the Grand Portage route to the heart of Canada. Among their exploits they induced England to enter the Hudson Bay trade, and gave the impetus that led to the organization of the Hudson Bay Company. The reports which these traders brought back had a most important effect in fostering exploration in the Northwest, and led to the visit of Menard, who was succeeded by Allouez, the pioneers of the Jesuits in Wisconsin.[1] Radisson gives us a good account of the early Wisconsin trade. Of his visit to the Ottawas he says:

"We weare wellcomed & made of saying that we weare the Gods and devils of the earth; that we should fournish them, & that they would bring us to their enemy to destroy them. We tould them [we] were very well content. We persuaded them first to come peaceably, not to distroy them presently, and if they would not condescend then would wee throw away the hatchett and make use of our thunders. We sent ambassadors to them wth guifts. That nation called Pontonatemick[2] wthout more adoe comes and meets us with the rest, and peace was concluded." "The savages," he writes, "love knives better than we serve God, which should make us blush for shame." In another place, "We went away free from any burden whilst those poore miserable thought themselves happy to carry our Equipage for the hope that they had that we should give them a brasse ring, or an awle, or an needle."[3] We find them using this influence in various places to make peace between hostile tribes, whom they threatened with punishment. This early commerce was carried on under the fiction of an exchange of presents. For example, Radisson says: "We gave them severall gifts and received many. They bestowed upon us above 300 robs of castors out of wch we brought not five to the ffrench being far in the country."[4]

[1] Cf. Radisson, 173–5, and Jes. Rels., 1660, pp. 12, 30; 1663, pp. 17 ff.

[2] Pottawattomies in the region of Green Bay.

[3] Wis. Hist. Colls., XI., 67–8.

[4] *Ibid.* XI., 90.

Among the articles used by Radisson in this trade were kettles, hatchets, knives, graters, awls, needles, tin looking-glasses, little bells, ivory combs, vermilion, sword blades, necklaces and bracelets. The sale of guns and blankets was at this time exceptional, nor does it appear that Radisson carried brandy in this voyage.[1]

More and more the young men of Canada continued to visit the savages at their villages. By 1660 the *coureurs de bois* formed a distinct class,[2] who, despite the laws against it, pushed from Michillimackinac into the wilderness. Wisconsin was a favorite resort of these adventurers. By the time of the arrival of the Jesuits they had made themselves entirely at home upon our lakes. They had preceded Allouez at Chequamegon bay, and when he established his mission at Green bay he came at the invitation of the Pottawattomies, who wished him to "mollify some young Frenchmen who were among them for the purpose of trading and who threatened and ill-treated them."[3] He found fur traders before him on the Fox and the Wolf. Bancroft's assertion[4] that "religious enthusiasm took possession of the wilderness on the upper lakes and explored the Mississippi," is misleading. It is not true that "not a cape was turned, nor a mission founded, nor a river entered, nor a settlement begun, but a Jesuit led the way." In fact the Jesuits followed the traders;[5] their missions were on the sites of trading posts, and they themselves often traded.[6]

When St. Lusson, with the *coureur de bois*, Nicholas Perrot, took official possession of the Northwest for France

[1] Radisson, 200, 217, 219.

[2] Sulte, in Transactions of the Wisconsin Academy of Science, Arts and Letters, V., 141; N. Y. Col. Docs., IX., 153, 140, 152; Margry, VI., 3; Parkman, Old Régime, 310–315.

[3] Cf. Jes. Rels., 1670, p. 92.

[4] History of United States, II., 138 (1884).

[5] Harrisse, Notes sur la Nouvelle France, 174–181.

[6] Parkman, Old Régime, 328 ff., and La Salle, 98; Margry, II., 251; Radisson, 173.

at the Sault Ste. Marie in 1671, the cost of the expedition was defrayed by trade in beaver.[1] Joliet, who, accompanied by Marquette, descended the Mississippi by the Fox and Wisconsin route in 1673, was an experienced fur trader. While Du Lhut, chief of the *coureurs de bois*, was trading on Lake Superior, La Salle,[2] the greatest of these merchants, was preparing his far-reaching scheme for colonizing the Indians in the Illinois region under the direction of the French, so that they might act as a check on the inroads of the Iroquois, and aid in his plan of securing an exit for the furs of the Northwest, particularly buffalo hides, by way of the Mississippi and the Gulf. La Salle's "Griffen," the earliest ship to sail the Great Lakes, was built for this trade, and received her only cargo at Green Bay. Accault, one of La Salle's traders, with Hennepin, met Du Lhut on the upper Mississippi, which he had reached by way of the Bois Brulé and St. Croix, in 1680. Du Lhut's trade awakened the jealousy of La Salle, who writes in 1682: "If they go by way of the Ouisconsing, where for the present the chase of the buffalo is carried on and where I have commenced an establishment, they will ruin the trade on which alone I rely, on account of the great number of buffalo which are taken there every year, almost beyond belief."[3] Speaking of the Jesuits at Green Bay, he declares that they "have in truth the key to the beaver country, where a brother blacksmith that they have and two companions convert more iron into beaver than the fathers convert savages into Christians."[4] Perrot says that the beaver north of the mouth of the Wisconsin were better than those of the Illinois country, and the chase was carried on in this region for a longer period;[5] and we know from Dablon that the Wisconsin savages were

[1] See Talon's report quoted in Narr. and Crit. Hist. Amer., IV., 175.

[2] Margry abounds in evidences of La Salle's commercial activity, as does Parkman's La Salle. See also Dunn, Indiana, 20–1.

[3] Margry, II., 254.

[4] Margry, II., 251.

[5] Tailhan's Perrot, 57.

not compelled to separate by families during the hunting season, as was common among other tribes, because the game here was so abundant.[1] Aside from its importance as a key to the Northwestern trade, Wisconsin seems to have been a rich field of traffic itself.

With such extensive operations as the foregoing in the region reached by Wisconsin rivers, it is obvious that the government could not keep the *coureurs de bois* from the woods. Even governors like Frontenac connived at the traffic and shared its profits. In 1681 the government decided to issue annual licenses,[2] and messengers were dispatched to announce amnesty to the *coureurs de bois* about Green Bay and the south shore of Lake Superior.[3]

We may now offer some conclusions upon the connection of the fur trade with French explorations:

1. The explorations were generally induced and almost always rendered profitable by the fur trade. In addition to what has been presented on this point, note the following:

In 1669, Patoulet writes to Colbert concerning La Salle's voyage to explore a passage to Japan: "The enterprise is difficult and dangerous, but the good thing about it is that the King will be at no expense for this pretended discovery."[4]

The king's instructions to Governor De la Barre in 1682 say that, "Several inhabitants of Canada, excited by the hope of the profit to be realized from the trade with the Indians for furs, have undertaken at various periods discoveries in the countries of the Nadoussioux, the river Mississipy, and other parts of America."[5]

2. The early traders were regarded as quasi-supernatural

[1] Jes. Rels., 1670.

[2] La Hontan, I., 53; N. Y. Col. Docs., IX., 159; Parkman, Old Régime, 305.

[3] Margry, VI., 45.

[4] Margry, I., 81.

[5] N. Y. Col. Docs., IX., 167. On the cost of such expeditions, see documents in Margry, I., 293–296; VI., 503–507. On the profits of the trade, see La Salle in 2 Penna. Archives, VI., 18–19.

beings by the Indians.[1] They alone could supply the coveted iron implements, the trinkets that tickled the savage's fancy, the "fire-water," and the guns that gave such increased power over game and the enemy. In the course of a few years the Wisconsin savages passed from the use of the implements of the stone age to the use of such an important product of the iron age as firearms. They passed also from the economic stage in which their hunting was for food and clothing simply, to that stage in which their hunting was made systematic and stimulated by the European demand for furs. The trade tended to perpetuate the hunter stage by making it profitable, and it tended to reduce the Indian to economic dependence[2] upon the Europeans, for while he learned to use the white man's gun he did not learn to make it or even to mend it. In this transition stage from their primitive condition the influence of the trader over the Indians was all-powerful. The pre-eminence of the individual Indian who owned a gun made all the warriors of the tribe eager to possess like power. The tribe thus armed placed their enemies at such a disadvantage that they too must have like weapons or lose their homes.[3] No wonder that La Salle was able to say: "The savages take better care of us French than of their own children. From us only can they get guns and goods."[4] This was the power that France used to support her in the struggle with England for the Northwest.

3. The trader used his influence to promote peace between the Northwestern Indians.[5]

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[1] See Radisson, *ante*, p. 28.

[2] *Vide post*, p. 62.

[3] *Vide ante*, p. 14; Radisson, 154; Minn. Hist. Colls., V., 427. Compare the effects of the introduction of bronze weapons into Europe.

[4] Margry, II., 284. On the power possessed by the French through this trade consult also D'Iberville's plan for locating Wisconsin Indians on the Illinois by changing their trading posts; see Margry, IV., 586–598.

[5] Wis. Hist. Colls., XI., 67–8, 90; Narr. and Crit. Hist. Amer., IV., 182; Perrot, 327; Margry, VI., 507–509, 653–4.

French Posts in Wisconsin.

In the governorship of Dongan of New York, as has been noted, the English were endeavoring to secure the trade of the Northwest. As early as 1685, English traders had reached Michillimackinac, the depot of supplies for the *coureur de bois*, where they were cordially received by the Indians, owing to their cheaper goods.[1] At the same time the English on Hudson Bay were drawing trade to their posts in that region. The French were thoroughly alarmed. They saw the necessity of holding the Indians by trading posts in their midst, lest they should go to the English, for as Begon declared, the savages "always take the part of those with whom they trade."[2] It is at this time that the French occupation of the Northwest begins to assume a new phase. Stockaded trading posts were established at such key-points as a strait, a portage, a river-mouth, or an important lake, where also were Indian villages. In 1685 the celebrated Nicholas Perrot was given command of Green Bay and its dependencies.[3] He had trading posts near Trempealeau and at Fort St. Antoine on the Wisconsin side of Lake Pepin where he traded with the Sioux, and for a time he had a post and worked the lead-mines above the Des Moines river. Both these and Fort St. Nicholas at the mouth of the Wisconsin[4] were dependencies of Green Bay. Du Lhut probably established Fort St. Croix at the portage between the Bois Brulé river and the St. Croix.[5] In 1695 Le Sueur built a fort on the largest island above Lake Pepin, and he also asked the command of the post of Chequamegon.[6]

These official posts were supported by the profits of Indian

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[1] N. Y. Col. Docs., IX., 296, 308; IV., 735.

[2] Quoted in Sheldon, Early History of Michigan, 310.

[3] Tailhan's Perrot, 156.

[4] Wis. Hist. Colls., X., 54, 300–302, 307, 321.

[5] Narr. and Crit. Hist. Amer., IV., 186.

[6] Margry, VI., 60. Near Ashland, Wis.

commerce,[1] and were designed to keep the northwestern tribes at peace, and to prevent the English and Iroquois influence from getting the fur trade.

The Fox Wars.

In 1683 Perrot had collected Wisconsin Indians for an attack on the Iroquois, and again in 1686 he led them against the same enemy. But the efforts of the Iroquois and the English to enter the region with their cheaper and better goods, and the natural tendency of savages to plunder when assured of supplies from other sources, now overcame the control which the French had exercised. The Sauks and Foxes, the Mascoutins, Kickapoos and Miamis, as has been described, held the Fox and Wisconsin route to the West, the natural and easy highway to the Mississippi, as La Hontan calls it.[2] Green Bay commanded this route, as La Pointe de Chagouamigon[3] commanded the Lake Superior route to the Bois Brulé and the St. Croix. One of Perrot's main objects was to supply the Sioux on the other side of the Mississippi, and these were the routes to them. To the Illinois region, also, the Fox route was the natural one. The Indians of this waterway therefore held the key to the French position, and might attempt to prevent the passage of French goods and support English influence and trade, or they might try to monopolize the intermediate trade themselves, or they might try to combine both policies.

As early as 1687 the Foxes, Mascoutins and Kickapoos,

[1] Consult French MSS., 3d series, VI., Parl. Library, Ottawa, cited in Minn. Hist. Colls., V., 422; Id., V., 425. In 1731 M. La Ronde, having constructed at his own expense a bark of forty tons on Lake Superior, received the post of La Pointe de Chagouamigon as a gratuity to defray his expenses. See also the story of Verenderye's posts, in Parkman's article in *Atlantic Monthly*, June, 1887, and Margry, VI. See also 2 Penna. Archives, VI., 18; La Hontan, I., 53; N. Y. Col. Docs., IX., 159; Tailhan, Perrot, 302.

[2] La Hontan, I., 105.

[3] Near Ashland, Wis.

animated apparently by hostility to the trade carried on by Perrot with the Sioux, their enemy at that time, threatened to pillage the post at Green Bay.[1] The closing of the Ottawa to the northern fur trade by the Iroquois for three years, a blow which nearly ruined Canada in the days of Frontenac, as Parkman has described,[2] not only kept vast stores of furs from coming down from Michillimackinac; it must, also, have kept goods from reaching the northwestern Indians. In 1692 the Mascoutins, who attributed the death of some of their men to Perrot, plundered his goods, and the Foxes soon entered into negotiation with the Iroquois.[3] Frontenac expressed great apprehension lest with their allies on the Fox and Wisconsin route they should remove eastward and come into connection with the Iroquois and the English, a grave danger to New France.[4] Nor was this apprehension without reason.[5] Even such docile allies as the Ottawas and Pottawattomies threatened to leave the French if goods were not sent to them wherewith to oppose their enemies. "They have powder and iron," complained an Ottawa deputy; "how can we sustain ourselves? Have compassion, then, on us, and consider that it is no easy matter to kill men with clubs."[6] By the end of the seventeenth century the disaffected Indians closed the Fox and Wisconsin route against French trade.[7] In 1699 an order was issued recalling the French from the Northwest, it being the design to concentrate French power at the nearer posts.[8] Detroit was founded in 1701 as a place to which to attract the northwestern trade and intercept the English. In 1702 the priest at St. Joseph reported that the English were sending presents

[1] Tailhan, Perrot, 139, 302.
[2] Frontenac, 315–316. Cf. Perrot, 302.
[3] Perrot, 331; N. Y. Col. Docs., IX., 633.
[4] *Ibid.*
[5] N. Y. Col. Docs., IV., 732–7.
[6] N. Y. Col. Docs., IX., 673.
[7] Shea, Early Voyages, 49.
[8] Kingsford, Canada, II., 394; N. Y. Col. Docs., IX., 635.

to the Miamis about that post and desiring to form an establishment in their country.[1] At the same date we find D'Iberville, of Louisiana, proposing a scheme for drawing the Miamis, Mascoutins and Kickapoos from the Wisconsin streams to the Illinois, by changing their trading posts from Green Bay to the latter region, and drawing the Illinois by trading posts to the lower Ohio.[2] It was shortly after this that the Miamis and Kickapoos passed south under either the French or English influence,[3] and the hostility of the Foxes became more pronounced. A part of the scheme of La Motte Cadillac at Detroit was to colonize Indians about that post,[4] and in 1712 Foxes, Sauks, Mascoutins, Kickapoos, Pottawattomies, Hurons, Ottawas, Illinois, Menomonees and others were gathered there under the influence of trade. But soon, whether by design of the French and their allies or otherwise, hostilities broke out against the Foxes and their allies. The animus of the combat appears in the cries of the Foxes as they raised red blankets for flags and shouted "We have no father but the English!" while the allies of the French replied, "The English are cowards; they destroy the Indians with brandy and are enemies of the true God!" The Foxes were defeated with great slaughter and driven back to Wisconsin.[5] From this time until 1734 the French waged war against the Foxes with but short intermissions. The Foxes allied themselves with the Iroquois and the Sioux, and acted as middlemen between the latter and the traders, refusing passage to goods on the ground that it would damage their own trade to allow this.[6] They fostered hostilities between their old foes the Chippeways and their new allies the Sioux, and thus they cut off English intercourse with the latter by way

[1] Margry, V., 219.

[2] *Ibid.* IV., 597.

[3] Wis. Hist. Colls., III., 149; Smith, Wisconsin, II., 315.

[4] Coll. de Manus., III., 623.

[5] See Hebberd's account, Wisconsin under French Dominion; Coll. de Manus., I., 623; Smith, Wisconsin, II., 315.

[6] Margry, VI., 543.

of the north. This trade between the Chippeways and the Sioux was important to the French, and commandants were repeatedly sent to La Pointe de Chagouamigon and the upper Mississippi to make peace between the two tribes.[1] While the wars were in progress the English took pains to enforce their laws against furnishing Indian goods to French traders. The English had for a time permitted this, and their own Indian trade had suffered because the French were able to make use of the cheap English goods. By their change in policy the English now brought home to the savages the fact that French goods were dearer.[2] Moreover, English traders were sent to Niagara to deal directly with "the far Indians," and the Foxes visited the English and Iroquois, and secured a promise that they might take up their abode with the latter and form an additional member of the confederacy in case of need.[3] As a counter policy the French attempted to exterminate the Foxes, and detached the Sioux from their alliance with the Foxes by establishing Fort Beauharnois, a trading post on the Minnesota side of Lake Pepin.[4]

The results of these wars were as follows:

1. They spread the feeling of defection among the Northwestern Indians, who could no longer be restrained, as at first, by the threat of cutting off their trade, there being now rivals in the shape of the English, and the French traders from Louisiana.[5]

2. They caused a readjustment of the Indian map of Wisconsin. The Mascoutins and the Pottawattomies had

[1] Tailhan, Perrot, *passim*; N. Y. Col. Docs., IX., 570, 619, 621; Margry, VI., 507–509, 553, 653–4; Minn. Hist. Colls., V., 422, 425; Wis. Hist. Colls., III., 154.

[2] N. Y. Col. Docs., V., 726 ff.

[3] *Ibid.* IV., 732, 735, 796–7; V., 687, 911.

[4] Margry, VI., 553, 563, 575–580; Neill in *Mag. Western History*, November, 1887.

[5] Perrot, 148; Parkman, Montcalm and Wolfe, I., 42; Hebberd, Wisconsin under French Dominion, chapters on the Fox wars.

already moved southward to the Illinois country. Now the Foxes, driven from their river, passed first to Prairie du Chien and then down the Mississippi. The Sauks went at first to the Wisconsin, near Sauk Prairie, and then joined the Foxes. The Winnebagoes gradually extended themselves along the Fox and Wisconsin. The Chippeways,[1] freed from their fear of the Foxes, to whom the Wolf and the Wisconsin had given access to the northern portion of the state, now passed south to Lac du Flambeau,[2] to the headwaters of the Wisconsin, and to Lac Court Oreilles.[3]

3. The closing of the Fox and Wisconsin route fostered that movement of trade and exploration which at this time began to turn to the far Northwest along the Pigeon river route into central British America, in search of the Sea of the West,[4] whereby the Rocky Mountains were discovered; and it may have aided in turning settlement into the Illinois country.

4. These wars were a part of a connected series, including the Iroquois wars, the Fox wars, the attack of the Wisconsin trader, Charles de Langlade, upon the center of English trade at Pickawillany,[5] Ohio, and the French and Indian war that followed. All were successive stages of the struggle against English trade in the French possessions.

French Settlement in Wisconsin.

Settlement was not the object of the French in the Northwest. The authorities saw as clearly as do we that the field was too vast for the resources of the colony, and they desired to hold the region as a source of peltries, and contract their settlements. The only towns worthy of the name in the Northwest were Detroit and the settlements in Indiana and

[1] Minn. Hist. Colls., V., 190–1.
[2] Oneida county.
[3] Sawyer county.
[4] Margry, VI.
[5] Parkman, Montcalm and Wolfe, I., 84, and citations; *vide post*, p. 41.

Illinois, all of which depended largely on the fur trade.[1] But in spite of the government the traffic also produced the beginnings of settlement in Wisconsin. About the middle of the century, Augustin de Langlade had made Green Bay his trading post. After Pontiac's war,[2] Charles de Langlade[3] made the place his permanent residence, and a little settlement grew up. At Prairie du Chien French traders annually met the Indians, and at this time there may have been a stockaded trading post there, but it was not a permanent settlement until the close of the Revolutionary war. Chequamegon bay was deserted[4] at the outbreak of the French war. There may have been a regular trading post at Milwaukee in this period, but the first trader recorded is not until 1762.[5] Doubtless wintering posts existed at other points in Wisconsin.

The characteristic feature of French occupancy of the Northwest was the trading post, and in illustration of it, and of the centralized administration of the French, the following account of De Repentigny's fort at Sault Ste. Marie (Michigan) is given in the words of Governor La Jonquière to the minister for the colonies in 1751:[6]

"He arrived too late last year at the Sault Ste. Marie to fortify himself well; however, he secured himself in a sort of fort large enough to receive the traders of Missilimakinac . . . . He employed his hired men during the whole winter in cutting 1100 pickets of fifteen feet for his fort, with the doublings, and the timber necessary for the construction of three houses, one of them thirty feet long by twenty wide, and two others twenty-five feet long and the same width as the

[1] Fergus, Historical Series, No. 12; Breese, Early History of Illinois; Dunn, Indiana; Hubbard, Memorials of a Half Century; Monette, History of the Valley of the Mississippi, I., ch. iv.

[2] Henry, Travels, ch. x.

[3] See Memoir in Wis. Hist. Colls., VII.; III., 224; VII., 127, 152, 166.

[4] Henry, Travels.

[5] Wis. Hist. Colls., I., 35.

[6] Minn. Hist. Colls., V., 435–6.

first. His fort is entirely furnished with the exception of a redoubt of oak, which he is to have made twelve feet square, and which shall reach the same distance above the gate of the fort. His fort is 110 feet square.

"As for the cultivation of the lands, the Sieur de Repentigny has a bull, two bullocks, three cows, two heifers, one horse and a mare from Missilimakinac. . . . . He has engaged a Frenchman who married at Sault Ste. Marie an Indian woman to take a farm; they have cleared it and sowed it, and without a frost they will gather 30 to 35 sacks of corn. The said Sieur de Repentigny so much feels it his duty to devote himself to the cultivation of these lands that he has already entered into a bargain for two slaves[1] whom he will employ to take care of the corn[2] that he will gather upon these lands."

The Traders' Struggle to Retain their Trade.

While they had been securing the trade of the far Northwest and the Illinois country, the French had allowed the English to gain the trade of the upper Ohio,[3] and were now brought face to face with the danger of losing the entire Northwest, and thus the connection of Canada and Louisiana. The commandants of the western posts were financially as well as patriotically interested. In 1754, Green Bay, then garrisoned by an officer, a sergeant and four soldiers, required for the Indian trade of its department thirteen canoes of goods annually, costing about 7000 livres each, making a

[1] Indians. Compare Wis. Hist. Colls., III., 256; VII., 158, 117, 179.

[2] The French minister for the colonies expressing approval of this post, writes in 1752: "As it can hardly be expected that any other grain than corn will grow there, it is necessary at least for a while to stick to it, and not to persevere stubbornly in trying to raise wheat." On this Dr. E. D. Neill comments: "Millions of bushels of wheat from the region west and north of Lake Superior pass every year . . . . through the ship canal at Sault Ste. Marie." The corn was for supplying the voyageurs.

[3] Margry, VI., 758.

total of nearly $18,000.[1] Bougainville asserts that Marin, the commandant of the department of the Bay, was associated in trade with the governor and intendant, and that his part netted him annually 15,000 francs.

When it became necessary for the French to open hostilities with the English traders in the Ohio country, it was the Wisconsin trader, Charles de Langlade, with his Chippeway Indians, who in 1752 fell upon the English trading post at Pickawillany and destroyed the center of English trade in the Ohio region.[2] The leaders in the opening of the war that ensued were Northwestern traders. St. Pierre, who commanded at Fort Le Bœuf when Washington appeared with his demands from the Governor of Virginia that the French should evacuate the Ohio country, had formerly been the trader in command at Lake Pepin on the upper Mississippi.[3] Coulon de Villiers, who captured Washington at Fort Necessity, was the son of the former commandant at Green Bay.[4] Beaujeau, who led the French troops to the defeat of Braddock, had been an officer in the Fox wars.[5] It was Charles de Langlade who commanded the Indians and was chiefly responsible for the success of the ambuscade.[6] Wisconsin Indians, representing almost all the tribes, took part with the French in the war.[7] Traders passed to and from their business to the battlefields of the East. For example, De Repentigny, whose post at Sault Ste. Marie has been described, was at Michillimackinac in January, 1755, took part in the battle of Lake George in the fall of that year,

[1] Canadian Archives, 1886, clxxii.

[2] Parkman, Montcalm and Wolfe, I., 84.

[3] Minn. Hist. Colls., V., 433. Washington was guided to the fort along an old trading route by traders; the trail was improved by the Ohio Company, and was used by Braddock in his march (Sparks, Washington's Works, II., 302).

[4] Wis. Hist. Colls., V., 117.

[5] *Ibid.*, 115.

[6] Parkman, Montcalm and Wolfe, II., 425–6. He was prominently engaged in other battles; see Wis. Hist. Colls., VII., 123–187.

[7] Wis. Hist. Colls., V., 117.

formed a partnership to continue the trade with a trader of Michillimackinac in 1756, was at that place in 1758, and in 1759 fought with Montcalm on the heights of Abraham.[1] It was not without a struggle that the traders yielded their beaver country.

The English and the Northwest. Influence of the Indian Trade on Diplomacy.

In the meantime what was the attitude of the English toward the Northwest? In 1720 Governor Spotswood of Virginia wrote:[2] "The danger which threatens these, his Maj'ty's Plantations, from this new Settlement is also very considerable, for by the communication which the French may maintain between Canada and Mississippi by the conveniency of the Lakes, they do in a manner surround all the British Plantations. They have it in their power by these Lakes and the many Rivers running into them and into the Mississippi to engross all the Trade of the Indian Nations w'ch are now supplied from hence."

Cadwallader Colden, Surveyor-General of New York, says in 1724: "New France (as the French now claim) extends from the mouth of the Mississippi to the mouth of the River St. Lawrence, by which the French plainly shew their intention of enclosing the British Settlements and cutting us off from all Commerce with the numerous Nations of Indians that are everywhere settled over the vast continent of North America."[3] As time passed, as population increased, and as the reports of the traders extolled the fertility of the country, both the English and the French, but particularly the Americans, began to consider it from the standpoint of coloniza-

[1] Neill, in *Mag. West. Hist.*, VII., 17, and Minn. Hist. Colls., V., 434–436. For other examples see Wis. Hist. Colls., V., 113–118; Minn. Hist. Colls., V., 430–1.

[2] Va. Hist. Colls., N. S., II., 329.

[3] N. Y. Col. Docs., V., 726.

tion as well as from that of the fur trade.[1] The Ohio Company had both settlement and the fur trade in mind,[2] and the French Governor, Galissonière, at the same period urged that France ought to plant a colony in the Ohio region.[3] After the conquest of New France by England there was still the question whether she should keep Canada and the Northwest.[4] Franklin, urging her to do so, offered as one argument the value of the fur trade, intrinsically and as a means of holding the Indians in check. Discussing the question whether the interior regions of America would ever be accessible to English settlement and so to English manufactures, he pointed out the vastness of our river and lake system, and the fact that Indian trade already permeated the interior. In interesting comparison he called their attention to the fact that English commerce reached along river systems into the remote parts of Europe, and that in ancient times the Levant had carried on a trade with the distant interior.[5]

That the value of the fur trade was an important element in inducing the English to retain Canada is shown by the fact that Great Britain no sooner came into the possession of the country than she availed herself of the fields for which she had so long intrigued. Among the western posts she occupied Green Bay, and with the garrison came traders;[6] but the fort was abandoned on the outbreak of Pontiac's war.[7] This war was due to the revolt of the Indians of the Northwest against the transfer of authority, and was fostered by

[1] Indian relations had a noteworthy influence upon colonial union; see Lucas, Appendiculae Historicae, 161, and Frothingham, Rise of the Republic, ch. iv.

[2] Parkman, Montcalm and Wolfe, I., 59; Sparks, Washington's Works, II., 302.

[3] Parkman, Montcalm and Wolfe, I., 21.

[4] *Ibid.* II., 403.

[5] Bigelow, Franklin's Works, III., 43, 83, 98–100.

[6] Wis. Hist. Colls., I., 26–38.

[7] Parkman, Pontiac, I., 185. Consult N. Y. Col. Docs., VI., 635, 690, 788, 872, 974.

the French traders.[1] It concerned Wisconsin but slightly, and at its close we find Green Bay a little trading community along the Fox, where a few families lived comfortably[2] under the quasi-patriarchal rule of Langlade.[3] In 1765 trade was re-established at Chequamegon Bay by an English trader named Henry, and here he found the Chippeways dressed in deerskins, the wars having deprived them of a trader.[4]

As early as 1766 some Scotch merchants more extensively reopened the fur trade, using Michillimackinac as the basis of their operations and employing French voyageurs.[5] By the proclamation of the King in 1763 the Northwest was left without political organization, it being reserved as crown lands and exempt from purchase or settlement, the design being to give up to the Indian trade all the lands "westward of the sources of the rivers which fall into the sea from the West and Northwest as aforesaid." In a report of the Lords Commissioners for Trade and Plantations in 1772 we find the attitude of the English government clearly set forth in these words :[6]

"The great object of colonization upon the continent of North America has been to improve and extend the commerce and manufactures of this kingdom . . . It does appear to us that the extension of the fur trade depends entirely upon the Indians being undisturbed in the possession of their hunting grounds, and that all colonization does in its nature and must in its consequence operate to the prejudice of that branch of commerce . . . Let the savages enjoy their deserts in quiet. Were they driven from their forests the peltry trade would decrease."

In a word, the English government attempted to adopt the

[1] Wis. Hist. Colls., I., 26.

[2] Carver, Travels.

[3] Porlier Papers, Wis. Fur Trade MSS., in possession of Wis. Hist. Soc.; also Wis. Hist. Colls., III., 200–201.

[4] Henry, Travels.

[5] Canadian Archives, 1888, p. 61 ff.

[6] Sparks, Franklin's Works, IV., 303–323.

western policy of the French. From one point of view it was a successful policy. The French traders took service under the English, and in the Revolutionary war Charles de Langlade led the Wisconsin Indians to the aid of Hamilton against George Rogers Clark,[1] as he had before against the British, and in the War of 1812 the British trader Robert Dickson repeated this movement.[2] As in the days of Begon, "the savages took the part of those with whom they traded." The secret proposition of Vergennes, in the negotiations preceding the treaty of 1783, to limit the United States by the Alleghanies and to give the Northwest to England, while reserving the rest of the region between the mountains and the Mississippi as Indian territory under Spanish protection,[3] would have given the fur trade to these nations.[4] In the extensive discussions over the diplomacy whereby the Northwest was included within the limits of the United States, it has been asserted that we won our case by the chartered claims of the colonies and by George Rogers Clark's conquest of the Illinois country. It appears, however, that in fact Franklin, who had been a prominent member and champion of the Ohio Company, and who knew the West from personal acquaintance, had persuaded Shelburne to cede it to us as a part of a liberal peace that should effect a reconciliation between the two countries. Shelburne himself looked upon the region from the point of view of the fur trade simply, and was more willing to make this concession than he was some others. In the discussion over the treaty in Parliament in 1783, the Northwestern boundary was treated almost solely from the point of view of the fur trade and of the desertion of the Indians. The question was one of profit and loss in this

[1] Wis. Hist. Colls., XI.

[2] *Ibid.*

[3] Jay, Address before the N. Y. Hist. Soc. on the Treaty Negotiations of 1782–3, appendix ; map in Narr. and Crit. Hist. Amer., VII., 148.

[4] But Vergennes had a just appreciation of the value of the region for settlement as well. He recognized and feared the American capacity for expansion.

traffic. One member attacked Shelburne on the ground that, "not thinking the naked independence a sufficient proof of his liberality to the United States, he had clothed it with the warm covering of our fur trade." Shelburne defended his cession "on the fair rule of the value of the district ceded,"[1] and comparing exports and imports and the cost of administration, he concluded that the fur trade of the Northwest was not of sufficient value to warrant continuing the war. The most valuable trade, he argued, was north of the line, and the treaty merely applied sound economic principles and gave America "a share in the trade." The retention of her Northwestern posts by Great Britain at the close of the war, in contravention of the treaty, has an obvious relation to the fur trade. In his negotiations with Hammond, the British ambassador in 1791, Secretary of State Jefferson said: "By these proceedings we have been intercepted entirely from the commerce of furs with the Indian nations to the northward—a commerce which had ever been of great importance to the United States, not only for its intrinsic value, but as it was the means of cherishing peace with these Indians, and of superseding the necessity of that expensive warfare which we have been obliged to carry on with them during the time that these posts have been in other hands."[2]

In discussing the evacuation of the posts in 1794 Jay was met by a demand that complete freedom of the Northwestern Indian trade should be granted to British subjects. It was furthermore proposed by Lord Grenville[3] that, "Whereas it is now understood that the river Mississippi would at no point thereof be intersected by such westward line as is described in the said treaty [1783]; and whereas it was stipulated in the said treaty that the navigation of the Mississippi should be free to both parties"—one of two new

[1] Hansard, XXIII., 377-8, 381-3, 389, 398-9, 405, 409-10, 423, 450, 457, 465.

[2] American State Papers, Foreign Relations, I., 190.

[3] *Ibid.* 487.

propositions should be accepted regarding the northwestern boundary. The maps in American State Papers, Foreign Relations, I., 492, show that both these proposals extended Great Britain's territory so as to embrace the Grand Portage and the lake region of northern Minnesota, one of the best of the Northwest Company's fur-trading regions south of the line, and in connection by the Red river with the Canadian river systems.[1] They were rejected by Jay. Secretary Randolph urged him to hasten the removal of the British, stating that the delay asked for, to allow the traders to collect their Indian debts, etc., would have a bad effect upon the Indians, and protesting that free communication for the British would strike deep into our Indian trade.[2] The definitive treaty included the following provisions:[3] The posts were to be evacuated before June 1, 1796. "All settlers and traders, within the precincts or jurisdiction of the said posts, shall continue to enjoy, unmolested, all their property of every kind, and shall be protected therein. They shall be at full liberty to remain there, or to remove with all or any part of their effects; and it shall also be free to them to sell their lands, houses, or effects, or to retain the property thereof, at their discretion; such of them as shall continue to reside within the said boundary lines shall not be compelled to become citizens of the United States, or to take any oath of allegiance to the government thereof; but they shall be at full liberty to do so if they think proper, and they shall make and declare their election within one year after the evacuation aforesaid. And all persons who shall continue there after the expiration of the said year without

[1] As early as 1794 the company had established a stockaded fort at Sandy lake. After Jay's treaty conceding freedom of entry, the company dotted this region with posts and raised the British flag over them. In 1805 the center of trade was changed from Grand Portage to Fort William Henry, on the Canada side. Neill, Minnesota, 239 (4th edn.). Bancroft, Northwest Coast, I., 560. *Vide ante*, p. 20, and *post*, p. 55.

[2] Amer. State Papers, For. Rels., I., p. 509.

[3] Treaties and Conventions, etc., 1776–1887, p. 380.

having declared their intention of remaining subjects of his British Majesty shall be considered as having elected to become citizens of the United States." "It is agreed that it shall at all times be free to His Majesty's subjects, and to the Indians dwelling on either side of the said boundary line, freely to pass and repass by land or inland navigation into the respective territories and countries of the two parties on the continent of America (the country within the limits of the Hudson's Bay Company only excepted), and to navigate all the lakes, rivers and waters thereof, and freely to carry on trade and commerce with each other."

In his elaborate defence of Jay's treaty, Alexander Hamilton paid much attention to the question of the fur trade. Defending Jay for permitting so long a delay in evacuation and for granting right of entry into our fields, he minimized the value of the trade. So far from being worth $800,000 annually, he asserted the trade within our limits would not be worth $100,000, seven-eighths of the traffic being north of the line. This estimate of the value of the northwestern trade was too low. In the course of his paper he made this observation :[1]

"In proportion as the article is viewed on an enlarged plan and permanent scale, its importance to us magnifies. Who can say how far British colonization may spread southward and down the west side of the Mississippi, northward and westward into the vast interior regions towards the Pacific ocean? . . . . In this large view of the subject, the fur trade, which has made a very prominent figure in the discussion, becomes a point scarcely visible. Objects of great variety and magnitude start up in perspective, eclipsing the little atoms of the day, and promising to grow and mature with time."

Such was not the attitude of Great Britain. To her the Northwest was desirable on account of its Indian commerce. By a statement of the Province of Upper Canada, sent with

[1] Lodge, Hamilton's Works, IV., 514.

the approbation of Lieutenant-General Hunter to the Duke of Kent, Commander-in-Chief of British North America, in the year 1800, we are enabled to see the situation through Canadian eyes :[1]

"The Indians, who had loudly and Justly complained of a treaty [1783] in which they were sacrificed by a cession of their country contrary to repeated promises, were with difficulty appeased, however finding the Posts retained and some Assurances given they ceased to murmur and resolved to defend their country extending from the Ohio Northward to the Great Lakes and westward to the Mississippi, an immense tract, in which they found the deer, the bear, the wild wolf, game of all sorts in profusion. They employed the Tomahawk and Scalping Knife against such deluded settlers who on the faith of the treaty to which they did not consent, ventured to cross the Ohio, secretly encouraged by the Agents of Government, supplied with Arms, Ammunition, and provisions they maintained an obstinate & destructive war against the States, cut off two Corps sent against them. . . . . The American Government, discouraged by these disasters were desirous of peace on any terms, their deputies were sent to Detroit, they offered to confine their Pretensions within certain limits far South of the Lakes. if this offer had been accepted the Indian Country would have been for ages an impassible Barrier between us. twas unfortunately perhaps wantonly rejected, and the war continued."

Acting under the privileges accorded to them by Jay's treaty, the British traders were in almost as complete possession of Wisconsin until after the war of 1812 as if Great Britain still owned it. When the war broke out the keys of the region, Detroit and Michillimackinac, fell into the British hands. Green Bay and Prairie du Chien were settlements of French-British traders and voyageurs. Their leader was Robert Dickson, who had traded at the latter settlement. Writing in 1814 from his camp at Winnebago

[1] Michigan Pioneer Colls., XV., 8; cf. 10, 12, 23, and XVI., 67.

Lake, he says: "I think that Bony [Bonaparte] must be knocked up as all Europe are now in Arms. The crisis is not far off when I trust in God that the Tyrant will be humbled, & the Scoundrel American Democrats be obliged to go down on their knees to Britain."[1] Under him most of the Wisconsin traders of importance received British commissions. In the spring of 1814 the Americans took Prairie du Chien, at the mouth of the Wisconsin river, whereupon Col. M'Douall, the British commandant at Michillimackinac, wrote to General Drummond:[2] . . . "I saw at once the imperious necessity which existed of endeavoring by every means to dislodge the American Genl from his new conquest, and make him relinquish the immense tract of country he had seized upon in consequence & which brought him into the very heart of that occupied by our friendly Indians, There was no alternative it must either be done or there was an end to our connection with the Indians for if allowed to settle themselves by dint of threats bribes & sowing divisions among them, tribe after tribe would be gained over or subdued, & thus would be destroyed the only barrier which protects the great trading establishments of the North West and the Hudson's Bay Companys. Nothing could then prevent the enemy from gaining the source of the Mississippi, gradually extending themselves by the Red river to Lake Winnipic, from whense the descent of Nelsons river to York Fort would in time be easy."

The British traders, voyageurs and Indians[3] dislodged the Americans, and at the close of the war England was practically in possession of the Indian country of the Northwest.

In the negotiations at Ghent the British commissioners asserted the sovereignty of the Indians over their lands, and their independence in relation to the United States, and

[1] Wis. Fur Trade MSS., 1814 (State Hist. Soc.).

[2] Wis. Hist. Colls., XI., 260. Mich. Pioneer Colls., XVI., 103–104.

[3] Wis. Hist. Colls., XI., 255. Cf. Mich. Pioneer Colls., XVI., 67. Rolette, one of the Prairie du Chien traders, was tried by the British for treason to Great Britain.

demanded that a barrier of Indian territory should be established between the two countries, free to the traffic of both nations but not open to purchase by either.[1] The line of the Grenville treaty was suggested as a basis for determining this Indian region. The proposition would have removed from the sovereignty of the United States the territory of the Northwest with the exception of about two-thirds of Ohio,[2] and given it over to the British fur traders. The Americans declined to grant the terms, and the United States was finally left in possession of the Northwest.

The Northwest Company.

The most striking feature of the English period was the Northwest Company.[3] From a study of it one may learn the character of the English occupation of the Northwest.[4] It was formed in 1783 and fully organized in 1787, with the design of contesting the field with the Hudson Bay Company. Goods were brought from England to Montreal, the headquarters of the company, and thence from the four emporiums, Detroit, Mackinaw, Sault Ste. Marie, and Grand Portage, they were scattered through the great Northwest, even to the Pacific ocean.

Toward the end of the eighteenth century ships[5] began to take part in this commerce; a portion of the goods was sent

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[1] Amer. State Papers, For. Rels., III., 705.

[2] Amer. State Papers, Ind. Affs., I., 562. See map in Collot's Travels, atlas.

[3] On this company see Mackenzie, Voyages; Bancroft, Northwest Coast, I., 378–616, and citations; *Hunt's Merch. Mag.*, III., 185; Irving, Astoria; Ross, The Fur Hunters of the Far West; Harmon, Journal; Report on the Canadian Archives, 1881, p. 61 et seq. This fur-trading life still goes on in the more remote regions of British America. See Robinson, Great Fur Land, ch. xv.

[4] Wis. Hist. Colls., XI., 123–5.

[5] Mackenzie, Voyages, xxxix. Harmon, Journal, 36. In the fall of 1784, Haldimand granted permission to the Northwest Company to build a small vessel at Detroit, to be employed next year on Lake Superior. Calendar of Canadian Archives, 1888, p. 72.

from Montreal in boats to Kingston, thence in vessels to Niagara, thence overland to Lake Erie, to be reshipped in vessels to Mackinaw and to Sault Ste. Marie, where another transfer was made to a Lake Superior vessel. These ships were of about ninety-five tons burden and made four or five trips a season. But in the year 1800 the primitive mode of trade was not materially changed. From the traffic along the main artery of commerce between Grand Portage and Montreal may be learned the kind of trade that flowed along such branches as that between the island of Mackinaw and the Wisconsin posts. The visitor at La Chine rapids, near Montreal, might have seen a squadron of Northwestern trading canoes leaving for the Grand Portage, at the west of Lake Superior.[1]

The boatmen, or "engagés," having spent their season's gains in carousal, packed their blanket capotes and were ready for the wilderness again. They made a picturesque crew in their gaudy turbans, or hats adorned with plumes and tinsel, their brilliant handkerchiefs tied sailor-fashion about swarthy necks, their calico shirts, and their flaming worsted belts, which served to hold the knife and the tobacco pouch. Rough trousers, leggings, and cowhide shoes or gaily-worked moccasins completed the costume. The trading birch canoe measured forty feet in length, with a depth of three and a width of five. It floated four tons of freight, and yet could be carried by four men over difficult portages. Its crew of eight men was engaged at a salary[2] of from five to

[1] Besides the authorities cited above, see "Anderson's Narrative," in Wis. Hist. Colls., IX., 137–206.

[2] An estimate of the cost of an expedition in 1717 is given in Margry, VI., 506. At that time the wages of a good voyageur for a year amounted to about $50. Provisions for the two months' trip from Montreal to Mackinaw cost about $1.00 per month per man. Indian corn for a year cost $16; lard, $10; *eau de vie*, $1.30; tobacco, 25 cents. It cost, therefore, less than $80 to support a voyageur for one year's trip into the woods. Gov. Ninian Edwards, writing at the time of the American Fur Company (*post*, p. 57), says: "The whole expense of transporting eight thousand weight of goods from Montreal to the Mississippi, wintering with the

eight hundred livres, about $100 to $160 per annum, each, with a yearly outfit of coarse clothing and a daily food allowance of a quart of hulled corn, or peas, seasoned with two ounces of tallow.

The experienced voyageurs who spent the winters in the woods were called *hivernans,* or winterers, or sometimes *hommes du nord;* while the inexperienced, those who simply made the trip from Montreal to the outlying depots and return, were contemptuously dubbed *mangeurs de lard,*[1]

Indians, and returning with a load of furs and peltries in the succeeding season, including the cost of provisions and portages and the hire of five engagés for the whole time does not exceed five hundred and twenty-five dollars, much of which is usually paid to those engagés when in the Indian country, in goods at an exorbitant price." American State Papers, VI., 65.

[1] This distinction goes back at least to 1681 (N. Y. Col. Docs., IX., 152). Often the engagement was for five years, and the voyageur might be transferred from one master to another, at the master's will.

The following is a translation of a typical printed engagement, one of scores in the possession of the Wisconsin Historical Society, the written portions in brackets:

"Before a Notary residing at the post of Michilimakinac, Undersigned; Was Present [Joseph Lamarqueritte] who has voluntarily engaged and doth bind himself by these Presents to M[onsieur Louis Grignion] here present and accepting, at [his] first requisition to set off from this Post [in the capacity of Winterer] in one of [his] Canoes or Bateaux to make the Voyage [going as well as returning] and to winter for [two years at the Bay].

"And to have due and fitting care on the route and while at the said [place] of the Merchandise, Provisions, Peltries, Utensils and of everything necessary for the Voyage; to serve, obey and execute faithfully all that the said Sieur [Bourgeois] or any other person representing him to whom he may transport the present Engagement, commands him lawfully and honestly; to do [his] profit, to avoid anything to his damage, and to inform him of it if it come to his knowledge, and generally to do all that a good [Winterer] ought and is obliged to do; without power to make any particular trade, to absent himself, or to quit the said service, under pain of these Ordinances, and of loss of wages. This engagement is therefore made, for the sum of [Eight Hundred] livres or shillings, ancient currency of Quebec, that he promises [and] binds himself to deliver and pay to the said [Winterer one month] after his return to this Post, and at his departure [an Equipment each year of 2 Shirts, 1 Blanket

"pork-eaters," because their pampered appetites demanded peas and pork rather than hulled corn and tallow. Two of the crew, one at the bow and the other at the stern, being especially skilled in the craft of handling the paddle in the rapids, received higher wages than the rest. Into the canoe was first placed the heavy freight, shot, axes, powder; next the dry goods, and, crowning all, filling the canoe to overflowing, came the provisions—pork, peas or corn, and sea biscuits, sewed in canvas sacks.

The lading completed, the voyageur hung his votive offerings in the chapel of Saint Anne, patron saint of voyageurs, the paddles struck the waters of the St. Lawrence, and the fleet of canoes glided away on its six weeks' journey to Grand Portage. There was the Ottawa to be ascended, the rapids to be run, the portages where the canoe must be emptied and where each voyageur must bear his two packs of ninety pounds apiece, and there were the *décharges*, where the canoe was merely lightened and where the voyageurs, now on the land, now into the rushing waters, dragged it forward till the rapids were passed. There was no stopping to dry, but on, until the time for the hasty meal, or the evening campfire underneath the pines. Every two miles there was a stop for a three minutes' smoke, or "pipe," and when a portage was made it was reckoned in "pauses," by which is meant

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of 3 point, 1 Carot of Tobacco, 1 Cloth Blanket, 1 Leather Shirt, 1 Pair of Leather Breeches, 5 Pairs of Leather Shoes, and Six Pounds of Soap.]

"For thus, etc., promising, etc., binding, etc., renouncing, etc.

"Done and passed at the said [Michilimackinac] in the year eighteen hundred [Seven] the [twenty-fourth] of [July before] twelve o'clock; & have signed with the exception of the said [Winterer] who, having declared himself unable to do so, has made his ordinary mark after the engagement was read to him.

his
"JOSEPH X LAMARQUERITTE. [SEAL]
mark.

"SAM[L]. ABBOTT, LOUIS GRIGNON. [SEAL]
Not. Pub."

Endorsed—"Engagement of Joseph Lamarqueritte to Louis Grignon."

the number of times the men must stop to rest. Whenever a burial cross appeared, or a stream was left or entered, the voyageurs removed their hats, and made the sign of the cross while one of their number said a short prayer; and again the paddles beat time to some rollicking song.[1]

Dans mon chemin, j'ai rencontré
Trois cavalières, bien montées;
L'on, lon, laridon daine,
Lon, ton, laridon dai.

Trois cavalières, bien montées,
L'un à cheval, et l'autre à pied;
L'on, lon, laridon daine,
Lon, ton, laridon dai.

Arrived at Sault Ste. Marie, the fleet was often doubled by newcomers, so that sometimes sixty canoes swept their way along the north shore, the paddles marking sixty strokes a minute, while the rocks gave back the echoes of Canadian songs rolling out from five hundred lusty throats. And so they drew up at Grand Portage, near the present northeast boundary of Minnesota, now a sleepy, squalid little village, but then the general rendezvous where sometimes over a thousand men met; for, at this time, the company had fifty clerks, seventy interpreters, eighteen hundred and twenty canoe-men, and thirty-five guides. It sent annually to Montreal 106,000 beaver-skins, to say nothing of other peltries. When the proprietors from Montreal met the proprietors from the northern posts, and with their clerks gathered at the banquet in their large log hall to the number of a hundred, the walls hung with spoils of the chase, the rough tables furnished with abundance of venison, fish, bread, salt pork, butter, peas, corn, potatoes, tea, milk, wine and *eau de vie*, while, outside, the motley crowd of engagés feasted on hulled corn and melted fat—was it not a truly

[1] For Canadian boat-songs see *Hunt's Merch. Mag.*, III., 189; Mrs. Kinzie, Wau Bun; Bela Hubbard, Memorials of a Half-Century; Robinson, Great Fur Land.

baronial scene? Clerks and engagés of this company, or its rival, the Hudson Bay Company, might winter one season in Wisconsin and the next in the remote north. For example, Amable Grignon, a Green Bay trader, wintered in 1818 at Lac qui Parle in Minnesota, the next year at Lake Athabasca, and the third in the hyperborean regions of Great Slave Lake. In his engagement he figures as Amable Grignon, *of the Parish of Green Bay, Upper Canada,* and he receives $400 "and found in tobacco and shoes and two doges," besides "the usual equipment given to clerks." He afterwards returned to a post on the Wisconsin river. The attitude of Wisconsin traders toward the Canadian authorities and the Northwestern wilds is clearly shown in this document, which brings into a line Upper Canada, "the parish of Green Bay," and the Hudson Bay Company's territories about Great Slave Lake![1]

How widespread and how strong was the influence of these traders upon the savages may be easily imagined, and this commercial control was strengthened by the annual presents made to the Indians by the British at their posts. At a time when our relations with Great Britain were growing strained, such a power in the Northwest was a serious menace.[2] In 1809 John Jacob Astor secured a charter from the State of New York, incorporating the American Fur Company. He proposed to consolidate the fur trade of the United States, plant an establishment in the contested Oregon territory, and link it with Michillimackinac (Mackinaw island) by way of the Missouri through a series of trading posts. In 1810 two expeditions of his Pacific Fur Company set out for the Columbia, the one around Cape Horn and the other by way

[1] Wis. Fur Trade MSS. (Wis. Hist. Soc.). Published in Proceedings of the Thirty-Sixth Annual Meeting of the State Hist. Soc. of Wis. 1889, pp. 81–82.

[2] See Mich. Pioneer Colls., XV., XVI., 67, 74. The government consulted the Northwest Company, who made particular efforts to "prevent the Americans from ever alienating the minds of the Indians." To this end they drew up memoirs regarding the proper frontiers.

of Green bay and the Missouri. In 1811 he bought a half interest in the Mackinaw Company, a rival of the Northwest Company and the one that had especial power in Wisconsin and Minnesota, and this new organization he called the Southwest Company. But the war of 1812 came; Astoria, the Pacific post, fell into the hands of the Northwest Company, while the Southwest Company's trade was ruined.

American Influences.

Although the Green Bay court of justice, such as it was, had been administered under American commissions since 1803, when Reaume dispensed a rude equity under a commission of Justice of the Peace from Governor Harrison,[1] neither Green Bay nor the rest of Wisconsin had any proper appreciation of its American connections until the close of this war. But now occurred these significant events:

1. Astor's company was reorganized as the American Fur Company, with headquarters at Mackinaw island.[2]

2. The United States enacted in 1816 that neither foreign fur traders, nor capital for that trade, should be admitted to this country.[3] This was designed to terminate English influence among the tribes, and it fostered Astor's company. The law was so interpreted as not to exclude British (that is generally, French) interpreters and boatmen, who were essential to the company; but this interpretation enabled British subjects to evade the law and trade on their own account by having their invoices made out to some Yankee clerk, while they accompanied the clerk in the guise of inter-

[1] Reaume's petition in Wis. Fur Trade MSS. in possession of Wisconsin Historical Society.

[2] On this company consult Irving, Astoria; Bancroft, Northwest Coast, I., ch. xvi.; II., chs. vii-x; *Mag. Amer. Hist.* XIII., 269; Franchere, Narrative; Ross, Adventures of the First Settlers on the Oregon, or Columbia River (1849); Wis. Fur Trade MSS. (State Hist. Soc.).

[3] U. S. Statutes at Large, III., 332. Cf. laws in 1802 and 1822.

preters.[1] In this way a number of Yankees came to the State.

3. In the year 1816 United States garrisons were sent to Green Bay and Prairie du Chien.[2]

4. In 1814 the United States provided for locating government trading posts at these two places.

Government Trading Houses.

The system of public trading houses goes back to colonial days. At first in Plymouth and Jamestown all industry was controlled by the commonwealth, and in Massachusetts Bay the stock company had reserved the trade in furs for themselves before leaving England.[3] The trade was frequently farmed out, but public "truck houses" were established by the latter colony as early as 1694–5.[4] Franklin, in his public dealings with the Ohio Indians, saw the importance of regulation of the trade, and in 1753 he wrote asking James Bowdoin of Massachusetts to procure him a copy of the truckhouse law of that colony, saying that if it had proved to work well he thought of proposing it for Pennsylvania.[5] The reply of Bowdoin showed that Massachusetts furnished goods to the Indians at wholesale prices and so drove out the French and the private traders. In 1757 Virginia

[1] Wis. Hist. Colls., I., 103; Minn. Hist. Colls., V., 9. The Warren brothers, who came to Wisconsin in 1818, were descendants of the Pilgrims and related to Joseph Warren who fell at Bunker Hill; they came from Berkshire, Mass., and marrying the half-breed daughters of Michael Cadotte, of La Pointe, succeeded to his trade.

[2] See the objections of British traders, Mich. Pioneer Colls., XVI., 76 ff. The Northwest Company tried to induce the British government to construe the treaty so as to prevent the United States from erecting the forts, urging that a fort at Prairie du Chien would "deprive the Indians of their 'rights and privileges'", guaranteed by the treaty.

[3] Mass. Coll. Recs., I., 55; III., 424.

[4] Acts and Resolves of the Prov. of Mass. Bay, I., 172.

[5] Bigelow, Franklin's Works, II., 316, 221. A plan for public trading houses came before the British ministry while Franklin was in England, and was commented upon by him for their benefit.

adopted the system for a time,[1] and in 1776 the Continental Congress accepted a plan presented by a committee of which Franklin was a member,[2] whereby £140,000 sterling was expended at the charge of the United Colonies for Indian goods to be sold at moderate prices by factors of the congressional commissioners.[3] The bearing of this act upon the governmental powers of the Congress is worth noting.

In his messages of 1791 and 1792 President Washington urged the need of promoting and regulating commerce with the Indians, and in 1793 he advocated government trading houses. Pickering, of Massachusetts, who was his Secretary of War with the management of Indian affairs, may have strengthened Washington in this design, for he was much interested in Indian improvement, but Washington's own experience had shown him the desirability of some such plan, and he had written to this effect as early as 1783.[4] The objects of Congressional policy in dealing with the Indians were stated by speakers in 1794 as follows:[5] 1. Protection of the frontiersmen from the Indians, by means of the army. 2. Protection of the Indians from the frontiersmen, by laws regulating settlement. 3. Detachment of the Indians from foreign influence, by trading houses where goods could be got cheaply. In 1795 a small appropriation was made for trying the experiment of public trading houses,[6] and in 1796, the same year that the British evacuated the posts, the law which established the system was passed.[7] It was to be temporary, but by re-enactments with alterations it was prolonged until 1822, new posts being added from time to time. In substance the laws provided a certain capital for the Indian trade, the goods to be sold by salaried United States

[1] Hening, Statutes, VII., 116.
[2] Journals of Congress, 1775, pp. 162, 168, 247.
[3] *Ibid.*, 1776, p. 41.
[4] Ford's Washington's Writings, X.. 309.
Annals of Cong., IV., 1273; cf. *ibid.*, V., 231.
[6] Amer. State Papers, Ind. Affs., I., 583.
[7] Annals of Cong., VI., 2889.

factors, at posts in the Indian country, at such rates as would protect the savage from the extortions of the individual trader, whose actions sometimes provoked hostilities, and would supplant British influence over the Indian. At the same time it was required that the capital stock should not be diminished. In the course of the debate over the law in 1796 considerable *laissez faire* sentiment was called out against the government's becoming a trader, notwithstanding that the purpose of the bill was benevolence and political advantage rather than financial gain.[1] President Jefferson and Secretary Calhoun were friends of the system.[2] It was a failure, however, and under the attacks of Senator Benton, the Indian agents and the American Fur Company, it was brought to an end in 1822. The causes of its failure were chiefly these:[3] The private trader went to the hunting grounds of the savages, while the government's posts were fixed. The private traders gave credit to the Indians, which the government did not.[4] The private trader understood the Indians, was related to them by marriage, and was energetic and not over-scrupulous. The government trader was a salaried agent not trained to the work. The private trader sold whiskey and the government did not. The British trader's goods were better than those of the government. The best business principles were not always followed by the superintendent. The system was far from effecting its object, for the Northwestern Indians had been accustomed to receive presents from the British authorities, and had small respect for a government that traded. Upon Wisconsin trade from 1814 to 1822 its influence was slight.

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[1] Annals of Congress, V., 230 ff., 283; Abridgment of Debates, VII., 187–8.

[2] Amer. State Papers, Ind. Affs., I., 684; II., 181.

[3] Amer. State Papers, VI., Ind. Affs., II., 203; Ind. Treaties, 399 *et seq.*; Wis. Hist. Colls., VII., 269; *Washington Gazette*, 1821, 1822, articles by Ramsay Crooks under signature "Backwoodsman," and speech of Tracy in House of Representatives, February 23, 1821; Benton, Thirty Years View; *id.*, Abr. Deb., VII., 1780.

[4] To understand the importance of these two points see *post*, pp. 62–5.

Wisconsin Trade in 1820.[1]

The goods used in the Indian trade remained much the same from the first, in all sections of the country.[2] They were chiefly blankets, coarse cloths, cheap jewelry and trinkets (including strings of wampum), fancy goods (like ribbons, shawls, etc.), kettles, knives, hatchets, guns, powder, tobacco, and intoxicating liquor.[3] These goods, shipped from Mackinaw, at first came by canoes or bateaux,[4] and in the later period by vessel, to a leading post, were there redivided[5] and sent to the various trading posts. The Indians, returning from the hunting grounds to their villages in the spring,[6]

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[1] In an address before the State Historical Society of Wisconsin, on the Character and Influence of the Fur Trade in Wisconsin (Proceedings, 1889, pp. 86–98), I have given details as to Wisconsin settlements, posts, routes of trade, and Indian location and population in 1820.

[2] Wis. Hist. Colls., XI., 377. Compare the articles used by Radisson, *ante*, p. 29. For La Salle's estimate of amount and kind of goods needed for a post, and the profits thereon, see Penna. Archives, 2d series, VI., 18–19. Brandy was an important item, one beaver selling for a pint. For goods and cost in 1728 see a bill quoted by E. D. Neill, on p. 20, *Mag. West. Hist.*, Nov., 1887. Cf. 4 Mass. Hist. Colls., III., 344; Byrd Manuscripts, I., 180 ff.; Minn. Hist. Colls., II., 46; Senate Doc. No. 90, 22d Cong., 1st Sess., II., 42 ff.

[3] Wis. Fur Trade MSS. Cf. Wis. Hist. Colls., XI., 377, and Amer. State Papers, Ind. Affs., II., 360. The amount of liquor taken to the woods was very great. The French Jesuits had protested against its use in vain (Parkman's Old Régime); the United States prohibited it to no purpose. It was an indispensable part of a trader's outfit. Robert Stuart, agent of the American Fur Company at Mackinaw, once wrote to John Lawe, one of the leading traders at Green Bay, that the 56 bbls. of whiskey which he sends is "enough to last two years, and half drown all the Indians he deals with." See also Wis. Hist. Colls., VII., 282; McKenney's Tour to the Lakes, 169, 299–301; McKenney's Memoirs, I., 19–21. An old trader assured me that it was the custom to give five or six gallons of "grog" —one-fourth water—to the hunter when he paid his credits; he thought that only about one-eighth or one-ninth part of the whole sales was in whiskey.

[4] A light boat sometimes called a "Mackinaw boat," about 32 feet long, by 6½ to 15 feet wide amidships, and sharp at the ends.

[5] See Wis. Hist. Colls., II., 108.

[6] Minn. Hist. Colls., V., 263.

set the squaws to making maple sugar,[1] planting corn, watermelons, potatoes, squashes, etc., and a little hunting was carried on. The summer was given over to enjoyment, and in the early period to wars. In the autumn they collected their wild rice, or their corn, and again were ready to start for the hunting grounds, sometimes 300 miles distant. At this juncture the trader, licensed by an Indian agent, arrived upon the scene with his goods, without which no family could subsist, much less collect any quantity of furs.[2] These were bought on credit by the hunter, since he could not go on the hunt for the furs, whereby he paid for his supplies, without having goods and ammunition advanced for the purpose. This system of credits,[3] dating back to the French period, had become systematized so that books were kept, with each Indian's account. The amount to which the hunter was trusted was between $40 and $50, at cost prices, upon which the trader expected a gain of about 100 per cent, so that the average annual value of furs brought in by each hunter to pay his credits should have been between $80 and $100.[4] The

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[1] See Wis. Hist. Colls., VII., 220, 286; III., 235; McKenney's Tour, 194; Schoolcraft, Ind. Tribes, II., 55. Sometimes a family made 1500 lbs. in a season.

[2] Lewis Cass in Senate Docs., No. 90, 22d Cong., 1st Sess., II., 1.

[3] See D'Iberville's plans for relocating Indian tribes by denying them credit at certain posts, Margry, IV., 597. The system was used by the Dutch, and the Puritans also; see Weeden, Economic and Social Hist. New Eng., I., 98. In 1765, after the French and Indian war, the Chippeways of Chequamegon Bay told Henry, a British trader, that unless he advanced them goods on credit, "their wives and children would perish; for that there were neither ammunition nor clothing left among them." He distributed goods worth 3000 beaver skins. Henry, Travels, 195-6. Cf. Neill, Minnesota, 225-6; N. Y. Col. Docs., VII., 543; Amer. State Papers, Ind. Affs., II., 64, 66, 329, 333-5; *North American Review*, Jan., 1826, p. 110.

[4] Biddle, an Indian agent, testified in 1822 that while the cost of transporting 100 wt. from New York to Green Bay did not exceed five dollars, which would produce a charge of less than 10 per cent on the original cost, the United States factor charged 50 per cent additional. The United States

amount of the credit varied with the reputation of the hunter for honesty and ability in the chase.[1] Sometimes he was trusted to the amount of three hundred dollars. If one-half the credits were paid in the spring the trader thought that he had done a fair business. The importance of this credit system can hardly be overestimated in considering the influence of the fur trade upon the Indians of Wisconsin, and especially in rendering them dependent upon the earlier settlements of the State.

The system left the Indians at the mercy of the trader when one nation monopolized the field, and it compelled them to espouse the cause of one or other when two nations contended for supremacy over their territory. At the same time it rendered the trade peculiarly adapted to monopoly, for when rivals competed, the trade was demoralized, and the Indian frequently sold to a new trader the furs which he had pledged in advance for the goods of another. When the American Fur Company gained control, they systematized matters so that there was no competition between their own agents, and private dealers cut into their trade but little for some years. The unit of trade was at first the beaver skin,

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capital stock was diminished by this trade, however. The private dealers charged much more. Schoolcraft in 1831 estimated that $48.34 in goods and provisions at cost prices was the average annual supply of each hunter, or $6.90 to each soul. The substantial accuracy of this is sustained by my data. See Sen. Doc., No. 90, 22d Cong., 1st Sess., II., 45; State Papers, No. 7, 18th Cong., 1st Sess., I.; State Papers, No. 54, 18th Cong., 2d Sess., III.; Schoolcraft's Indian Tribes, III., 599; Invoice Book, Amer. Fur Co., for 1820, 1821; Wis. Fur Trade MSS. in possession of Wisconsin Historical Society.

[1] The following is a typical account, taken from the books of Jacques Porlier, of Green Bay, for the year 1823: The Indian Michel bought on credit in the fall: $16 worth of cloth; a trap, $1.00; two and a half yards of cotton, $3.12½; three measures of powder, $1.50; lead, $1.00; a bottle of whiskey, 50 cents, and some other articles, such as a gun worm, making in all a bill of about $25. This he paid in full by bringing in eighty-five muskrats, worth nearly $20; a fox, $1.00, and a mocock of maple sugar, worth $4.00.

or, as the pound of beaver skin came to be called, the "plus."[1] The beaver skin was estimated at a pound and a half, though it sometimes weighed two, in which case an allowance was made. Wampum was used for ornament and in treaty-making, but not as currency. Other furs or Indian commodities, like maple sugar and wild rice, were bought in terms of beaver. As this animal grew scarcer the unit changed to money. By 1820, when few beaver were marketed in Wisconsin, the term plus stood for one dollar.[2] The muskrat skin was also used as the unit in the later days of the trade.[3] In the southern colonies the pound of deer skin had answered the purpose of a unit.[4]

The goods being trusted to the Indians, the bands separated for the hunting grounds. Among the Chippeways, at least, each family or group had a particular stream or region where it exclusively hunted and trapped.[5] Not only were the hunting grounds thus parcelled out; certain Indians were apportioned to certain traders,[6] so that the industrial activities

[1] A. J. Vieau, who traded in the thirties, gave me this information.

[2] For the value of the beaver at different periods and places consult indexes, under "beaver," in N. Y. Col. Docs.; Bancroft, Northwest Coast; Weeden, Economic and Social Hist. New Eng.; and see Morgan, American Beaver, 243–4; Henry, Travels, 192; 2 Penna. Archives, VI., 18; Servent, in Paris Ex. Univ. 1867, Rapports, VI., 117, 123; Proc. Wis. State Hist. Soc., 1889, p. 86.

[3] Minn. Hist. Colls. II., 46, gives the following table for 1836:

St. Louis Prices.		*Minn. Price.*	*Nett Gain.*
Three pt. blanket	= $3 25	60 rat skins at 20 cents = $12 00	$8 75
1½ yds. Stroud	= 2 37	60 rat skins at 20 cents = 12 00	9 63
1 N. W. gun	= 6 50	100 rat skins at 20 cents = 20 00	13 50
1 lb. lead	= 06	2 rat skins at 20 cents = 40	34
1 lb. powder	= 28	10 rat skins at 20 cents = 2 00	1 72
1 tin kettle	= 2 50	60 rat skins at 20 cents = 12 00	9 50
1 knife	= 20	4 rat skins at 20 cents = 80	60
1 lb. tobacco	= 12	8 rat skins at 20 cents = 1 60	1 38
1 looking glass	= 04	4 rat skins at 20 cents = 80	76
1½ yd. scarlet cloth	= 3 00	60 rat skins at 20 cents = 12 00	9 00

See also the table of prices in Senate Docs., No. 90, 22d Cong., 1st Sess., II., 42 *et seq.*

[4] Douglass, Summary, I., 176.

[5] Morgan, American Beaver, 243.

[6] Proc. Wis. Hist. Soc., 1889, pp. 92–98.

of Wisconsin at this date were remarkably systematic and uniform. Sometimes the trader followed the Indians to their hunting grounds. From time to time he sent his engagés (hired men), commonly five or six in number, to the various places where the hunting bands were to be found, to collect furs on the debts and to sell goods to those who had not received too large credits, and to the customers of rival traders; this was called "running a deouine."[1] The main wintering post had lesser ones, called "jack-knife posts,"[2] depending on it, where goods were left and the furs gathered in going to and from the main post. By these methods Wisconsin was thoroughly visited by the traders before the "pioncers" arrived.[3]

The kind and amount of furs brought in may be judged by the fact that in 1836, long after the best days of the trade, a single Green Bay firm, Porlier and Grignon, shipped to the American Fur Company about 3600 deer skins, 6000 musk-rats, 150 bears, 850 raccoons, besides beavers, otters, fishers, martens, lynxes, foxes, wolves, badgers, skunks, etc., amounting to over $6000.

None of these traders becamc wealthy; Astor's company absorbed the profits. It required its clerks, or factors, to pay an advance of 81½ per cent on the sterling cost of the blankets, strouds, and other English goods, in order to cover the cost of importation and the expense of transportation from New York to Mackinaw. Articles purchased in New York were charged with 15⅓ per cent advance for transportation, and each class of purchasers was charged with 33⅓ per cent advance as profit on the aggregate amount.[4]

[1] Amer. State Papers, Ind. Affs., II., 66.

[2] Wis. Hist. Colls., XI., 220, 223.

[3] The centers of Wisconsin trade were Green Bay, Prairie du Chien, and La Pointe (on Madelaine island, Chequamegon bay). Lesser points of distribution were Milwaukee and Portage. From these places, by means of the interlacing rivers and the numerous lakes of northern Wisconsin, the whole region was visited by birch canoes or Mackinaw boats.

[4] Schoolcraft in Senate Doc. No. 90, 22d Cong., 1st Sess., II., 43.

I estimate, from the data given in the sources cited on page 63, note, that in 1820 between $60,000 and $75,000 worth of goods was brought annually to Wisconsin for the Indian trade. An average outfit for a single clerk at a main post was between $1500 and $2000, and for the dependent posts between $100 and $500. There were probably not over 2000 Indian hunters in the State, and the total Indian population did not much exceed 10,000. Comparing this number with the early estimates for the same tribes, we find that, if the former are trustworthy, by 1820 the Indian tribes that remained in Wisconsin had increased their numbers. But the material is too unsatisfactory to afford any valuable conclusion.

After the sale of their lands and the receipt of money annuities, a change came over the Indian trade. The monopoly held by Astor was broken into, and as competition increased, the sales of whiskey were larger, and for money, which the savage could now pay. When the Indians went to Montreal in the days of the French, they confessed that they could not return with supplies because they wasted their furs upon brandy. The same process now went on at their doors. The traders were not dependent upon the Indian's success in hunting alone; they had his annuities to count on, and so did not exert their previous influence in favor of steady hunting. Moreover, the game was now exploited to a considerable degree, so that Wisconsin was no longer the hunter's paradise that it had been in the days of Dablon and La Salle. The long-settled economic life of the Indian being revolutionized, his business honesty declined, and credits were more frequently lost. The annuities fell into the traders' hands for debts and whiskey. "There is no less than near $420,000 of claims against the Winnebagoes," writes a Green Bay trader at Prairie du Chien, in 1838, "so that if they are all just, the dividend will be but very small for each claimant, as there is only $150,000 to pay that."[1]

[1] Lawe to Vieau, in Wis. Fur Trade MSS. See also U. S. Indian Treaties, and Wis. Hist. Colls., V., 236.

By this time the influence of the fur trader had so developed mining in the region of Dubuque, Iowa, Galena, Ill., and southwestern Wisconsin, as to cause an influx of American miners, and here began a new element of progress for Wisconsin. The knowledge of these mines was possessed by the early French explorers, and as the use of firearms spread they were worked more and more by Indians, under the stimulus of the trader. In 1810 Nicholas Boilvin, United States Indian agent at Prairie du Chien, reported that the Indians about the lead mines had mostly abandoned the chase and turned their attention to the manufacture of lead, which they sold to fur traders. In 1825 there were at least 100 white miners in the entire lead region,[1] and by 1829 they numbered in the thousands.

Black Hawk's war came in 1832, and agricultural settlement sought the southwestern part of the State after that campaign. The traders opened country stores, and their establishments were nuclei of settlement.[2] In Wisconsin the Indian trading post was a thing of the past.

The birch canoe and the pack-horse had had their day in western New York and about Montreal. In Wisconsin the age of the voyageur continued nearly through the first third of this century. It went on in the Far Northwest in substantially the same fashion that has been here described, until quite recently; and in the great North Land tributary to Hudson Bay the *chanson* of the voyageur may still be heard, and the dog-sledge laden with furs jingles across the snowy plains from distant post to distant post.

Effects of the Trading Post.

We are now in a position to offer some conclusions as to the influence of the Indian trading post.

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[1] House Ex. Docs., 19th Cong., 2d Sess., II., No. 7.

[2] For example see the Vieau Narrative in Wis. Hist. Colls., XI., and the Wis. Fur Trade MSS.

[3] Butler, Wild North Land; Robinson, Great Fur Land, ch. xv.

I. Upon the savage it had worked a transformation. It found him without iron, hunting merely for food and raiment. It put into his hands iron and guns, and made him a hunter for furs with which to purchase the goods of civilization. Thus it tended to perpetuate the hunter stage; but it must also be noted that for a time it seemed likely to develop a class of merchants who should act as intermediaries solely. The inter-tribal trade between Montreal and the Northwest, and between Albany and the Illinois and Ohio country, appears to have been commerce in the proper sense of the term[1] (*Kauf zum Verkauf*). The trading post left the unarmed tribes at the mercy of those that had bought firearms, and this caused a relocation of the Indian tribes and an urgent demand for the trader by the remote and unvisited Indians. It made the Indian dependent on the white man's supplies. The stage of civilization that could make a gun and gunpowder was too far above the bow and arrow stage to be reached by the Indian. Instead of elevating him the trade exploited him. But at the same time, when one nation did not monopolize the trade, or when it failed to regulate its own traders, the trading post gave to the Indians the means of resistance to agricultural settlement. The American settlers fought for their farms in Kentucky and Tennessee at a serious disadvantage, because for over half a century the Creeks and Cherokees had received arms and ammunition from the trading posts of the French, the Spanish and the English. In Wisconsin the settlers came after the Indian had become thoroughly dependent on the American traders, and so late that no resistance was made. The trading post gradually exploited the Indian's hunting ground. By intermarriages with the French traders the purity of the stock

[1] Notwithstanding Kulischer's assertion that there is no room for this in primitive society. *Vide* Der Handel auf den primitiven Culturstufen, in *Zeitschrift für Völkerpsychologie und Sprachwissenschaft*, X., No. 4, p. 378. Compare instances of inter-tribal trade given *ante*, pp. 11, 26.

was destroyed and a mixed race produced.[1] The trader broke down the old totemic divisions, and appointed chiefs regardless of the Indian social organization, to foster his trade. Indians and traders alike testify that this destruction of Indian institutions was responsible for much of the difficulty in treating with them, the tribe being without a recognized head.[2] The sale of their lands, made less valuable by the extinction of game, gave them a new medium of exchange, at the same time that, under the rivalry of trade, the sale of whiskey increased.

II. Upon the white man the effect of the Indian trading post was also very considerable. The Indian trade gave both English and French a footing in America. But for the Indian supplies some of the most important settlements would have perished.[3] It invited to exploration: the dream of a water route to India and of mines was always present in the more extensive expeditions, but the effective practical inducement to opening the water systems of the interior, and the thing that made exploration possible, was the fur trade. As has been shown, the Indian eagerly invited the trader. Up to a certain point also the trade fostered the advance of settlements. As long as they were in extension of trade with the Indians they were welcomed. The trading posts were the pioneers of many settlements along the entire colonial frontier. In Wisconsin the sites of our principal cities are the sites of old trading posts, and these earliest fur-trading settlements furnished supplies to the farming, mining and lumbering pioneers. They were centers about which settlement collected after the exploitation of the Indian. Although the efforts of

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[1] On the "*metis*," *bois-brulés*, or half-breeds, consult Smithsonian Reports, 1879, p. 309, and Robinson, Great Fur Land, ch. iii.

[2] Minn. Hist. Colls., V., 135; Biddle to Atkinson, 1819, in Ind. Pamphlets, Vol. I., No. 15 (Wis. Hist. Soc. Library).

[3] Parkman, Pioneers of France, 230; Carr, Mounds of the Mississippi, p. 8, n. 8; Smith's Generall Historie, I., 88, 90, 155 (Richmond, 1819).

the Indians and of the great trading companies, whose profits depended upon keeping the primitive wilderness, were to obstruct agricultural settlement, as the history of the Northwest and of British America shows, nevertheless reports brought back by the individual trader guided the steps of the agricultural pioneer. The trader was the farmer's pathfinder into some of the richest regions of the continent. Both favorably and unfavorably the influence of the Indian trade on settlement was very great.

The trading post was the strategic point in the rivalry of France and England for the Northwest. The American colonists came to know that the land was worth more than the beaver that built in the streams, but the mother country fought for the Northwest as the field of Indian trade in all the wars from 1689 to 1812. The management of the Indian trade led the government under the lead of Franklin and Washington into trading on its own account, a unique feature of its policy. It was even proposed by the Indian Superintendent at one time that the government should manufacture the goods for this trade. In providing a new field for the individual trader, whom he expected the government trading houses to dispossess, Jefferson proposed the Lewis and Clarke expedition, which crossed the continent by way of the Missouri and the Columbia, as the British trader, Mackenzie, had before crossed it by way of Canadian rivers. The genesis of this expedition illustrates at once the comprehensive western schemes of Jefferson, and the importance of the part played by the fur trade in opening the West. In 1786, while the Annapolis convention was discussing the navigation of the Potomac, Jefferson wrote to Washington from Paris inquiring about the best place for a canal between the Ohio and the Great Lakes.[1] This was in promotion of the project of Ledyard, a Connecticut man, who was then in Paris endeavoring to interest the wealthiest house there in the fur trade of the Far West. Jefferson took so great an interest in

[1] Jefferson, Works, II., 60, 250, 370.

the plan that he secured from the house a promise that if they undertook the scheme the depot of supply should be at Alexandria, on the Potomac river, which would be in connection with the Ohio, if the canal schemes of the time were carried out. After the failure of the negotiations of Ledyard, Jefferson proposed to him to cross Russia to Kamschatka, take ship to Nootka Sound, and thence return to the United States by way of the Missouri.[1] Ledyard was detained in Russia by the authorities in spite of Jefferson's good offices, and the scheme fell through. But Jefferson himself asserts that this suggested the idea of the Lewis and Clarke expedition, which he proposed to Congress as a means of fostering our Indian trade.[2] Bearing in mind his instructions to this party, that they should see whether the Oregon furs might not be shipped down the Missouri instead of passing around Cape Horn, and the relation of his early canal schemes to this design, we see that he had conceived the project of a transcontinental fur trade which should center in Virginia. Astor's subsequent attempt to push through a similar plan resulted in the foundation of his short-lived post of Astoria at the mouth of the Columbia. This occupation greatly aided our claim to the Oregon country as against the British traders, who had reached the region by way of the northern arm of the Columbia.

In Wisconsin, at least, the traders' posts, placed at the carrying places around falls and rapids, pointed out the water powers of the State. The portages between rivers became canals, or called out canal schemes that influenced the early development of the State. When Washington, at the close of his military service, inspected the Mohawk valley and the portages between the headwaters of the Potomac and the Ohio, as the channels "of conveyance of the extensive and valuable

[1] Allen's Lewis and Clarke Expedition, p. ix (edition of 1814. The introduction is by Jefferson).

[2] Jefferson's messages of January 18, 1803, and February 19, 1806. See Amer. State Papers, Ind. Affs., I., 684.

trade of a rising empire,"[1] he stood between two eras—the era with which he was personally familiar, when these routes had been followed by the trader with the savage tribes,[2] and the era which he foresaw, when American settlement passed along the same ways to the fertile West and called into being the great trunk-lines of the present day.[3] The trails became the early roads. An old Indian trader relates that "the path between Green Bay and Milwaukee was originally an Indian trail, and very crooked, but the whites would straighten it by cutting across lots each winter with their jumpers, wearing bare streaks through the thin covering, to be followed in the summer by foot and horseback travel along the shortened path."[4] The process was typical of a greater one. Along the lines that nature had drawn the Indians traded and warred; along their trails and in their birch canoes the trader passed, bringing a new and a transforming life. These slender lines of eastern influence stretched throughout all our vast and intricate water-system, even to the Gulf of Mexico, the Pacific, and the Arctic seas, and these lines were in turn followed by agricultural and by manufacturing civilization.

In a speech upon the Pacific Railway delivered in the United States Senate in 1850, Senator Benton used these words: "There is an idea become current of late . . . that none but a man of science, bred in a school, can lay off a

[1] See Adams, Maryland's Influence upon Land Cessions to U. S., J. H. U. Studies, 3d Series, No. I., pp. 80–82.

[2] *Ibid.* *Vide ante*, p. 41.

[3] Narr. and Crit. Hist. Amer., VIII., 10. Compare Adams, as above. At Jefferson's desire, in January and February of 1788, Washington wrote various letters inquiring as to the feasibility of a canal between Lake Erie and the Ohio, "whereby the fur and peltry of the upper country can be transported"; saying: "Could a channel once be opened to convey the fur and peltry from the Lakes into the eastern country, its advantages would be so obvious as to induce an opinion that it would in a short time become the channel of conveyance for much the greater part of the commodities brought from thence." Sparks, Washington's Works, IX., 303, 327.

[4] Wis. Hist. Colls., XI., 230.

road. That is a mistake. There is a class of topographical engineers older than the schools, and more unerring than the mathematics. They are the wild animals—buffalo, elk, deer, antelope, bears, which traverse the forest, not by compass, but by an instinct which leads them always the right way—to the lowest passes in the mountains, the shallowest fords in the rivers, the richest pastures in the forest, the best salt springs, and the shortest practicable routes between remote points. They travel thousands of miles, have their annual migrations backwards and forwards, and never miss the best and shortest route. These are the first engineers to lay out a road in a new country; the Indians follow them, and hence a buffalo-road becomes a war-path. The first white hunters follow the same trails in pursuing their game; and after that the buffalo-road becomes the wagon-road of the white man, and finally the macadamized or railroad of the scientific man. It all resolves itself into the same thing—into the same buffalo-road; and thence the buffalo becomes the first and safest engineer. Thus it has been here in the countries which we inhabit and the history of which is so familiar. The present national road from Cumberland over the Alleghanies was the military road of General Braddock; which had been the buffalo-path of the wild animals. So of the two roads from western Virginia to Kentucky—one through the gap in the Cumberland mountains, the other down the valley of the Kenhawa. They were both the war-path of the Indians and the travelling route of the buffalo, and their first white acquaintances the early hunters. Buffaloes made them in going from the salt springs on the Holston to the rich pastures and salt springs of Kentucky; Indians followed them first, white hunters afterwards—and that is the way Kentucky was discovered. In more than a hundred years no nearer or better routes have been found; and science now makes her improved roads exactly where the buffalo's foot first marked the way and the hunter's foot afterwards followed him. So all over Kentucky and the West; and so in the Rocky Mountains. The famous South Pass was no scientific

discovery. Some people think Fremont discovered it. It had been discovered forty years before—long before he was born. He only described it and confirmed what the hunters and traders had reported and what they showed him. It was discovered, or rather first seen by white people, in 1808, two years after the return of Lewis and Clark, and by the first company of hunters and traders that went out after their report laid open the prospect of the fur trade in the Rocky Mountains.

"An enterprising Spaniard of St. Louis, Manuel Lisa, sent out the party; an acquaintance and old friend of the Senator from Wisconsin who sits on my left [General Henry Dodge] led the party—his name Andrew Henry. He was the first man that saw that pass; and he found it in the prosecution of his business, that of a hunter and trader, and by following the game and the road which they had made. And that is the way all passes are found. But these traders do not write books and make maps, but they enable other people to do it."[1]

Benton errs in thinking that the hunter was the pioneer in Kentucky. As I have shown, the trader opened the way. But Benton is at least valid authority upon the Great West, and his fundamental thesis has much truth in it. A continuously higher life flowed into the old channels, knitting the United States together into a complex organism. It is a process not limited to America. In every country the exploitation of the wild beasts,[2] and of the raw products gener-

[1] Cong. Rec., XXIII., 57. I found this interesting confirmation of my views after this paper was written. Compare *Harper's Magazine*, Sept. 1890, p. 565.

[2] The traffic in furs in the Middle Ages was enormous, says Friedländer, Sittengeschichte, III., 62. Numerous cities in England and on the Continent, whose names are derived from the word "beaver" and whose seals bear the beaver, testify to the former importance in Europe of this animal; see *Canadian Journal*, 1859, 359. See Du Chaillu, Viking Age, 209–10; Marco Polo, bk. iv., ch. xxi. Wattenbach, in *Historische Zeitschrift*, IX., 391, shows that German traders were known in the lands about the Baltic at least as early as the knights.

ally, causes the entry of the disintegrating and transforming influences of a higher civilization. "The history of commerce is the history of the intercommunication of peoples."

INDEX TO NINTH VOLUME

OF

Johns Hopkins University Studies

IN

HISTORICAL AND POLITICAL SCIENCE.

A

Abolition movement, rise of the, 532.
Accault and Du Lhut, 570.
Adams, F. O., 456; quoted, 433.
Adams, *Prof.* H. B., 204, 209, 214; and the Bureau of Education, 59.
Adams, H. C., cited, 103.
Adams, John, and the Federalists, 116.
Adrian I., 308, note.
Aemilius, 350; and the plebeians, 366.
"African Institution," 498.
Agassiz, comes to America, 197.
Ager publicus, 333, 335–339, 365, 372, 392.
Aggenus Urbicus, 338, note.
Agiluf, and the Lombard dukes, 276.
Agiprandus, 307.
Agrarian laws of Rome. *See* Roman Republic.
Agriculture, Department of, 47, 62–64.
Aistulf, donation of, 277.
Aki Shosho, 453.
Akidzuki Ukio No Suke, 457; quoted, 459, 460.
Albany Convention, 25.
Alboin, and the Lombard conquest, 239, 249, note.
Alerona, 281.
Alexander, Ashton, and the University of Maryland, 163.
Alexander the Great, 370.
"Alfuso scavino," 299.
Algeria, fountain of, 385.
Algic Indians, 563, 565.
Algonquins, and the French, 551, 554, 567.
Alien and Sedition Acts, 125.
Allen, *Rev.* E. P., and Mount St. Mary's College, 178.
Allen, Wm. F., 206.
Alligator, schooner, goes to Liberia, 502.
Allouez, expedition of, 563, 564, 568, 569.
Amazon, the, conveys *Gov.* Roberts to Liberia, 517.
Ambrosius, opposes the bishop of Siena, 277.
Ambustus, Fabius, 361.
American Association for the Advancement of Science, 209.
American Bible Society, 496.
American Executive Documents, cited, 438, 439, 441, 448, 449, 456.
American Fur Company, 596, 597, 600, 603, 605.
American Historical Association, 68, note.
American State Papers, 587.
Anastasius, 307.
Ancus, incorporates the Latins, 332.

Anderson, Benjamin, journey of, 522.
Andover, Phillips foundation in, 201.
Angell, *Prest.* James B., and Johns Hopkins University, 187.
Animal Industry, Bureau of, 63.
Ann, the, sails to Monrovia, 510.
Ansei-Kiji, 436, note; 440, note.
Anselmius, and Lewis the Pious, 308.
"Anti-Federalists," 34 ff.
Antonius, Lucius, law of, 419.
Antonius, Marcus, 413; and the agrarian law, 419, 420.
Apollo, festival of, 362.
Appian, quoted, 390, note; 402, 415, 418, 420.
Aquae Sextiae, battle of, 409.
Arezzo, bishop of, 269; canons of, 307.
Aristocracy, defined, 13.
Aristotle, and the land question, 337, 444.
Arndt, 445.
Arnifrid, contract of, 267.
Articles of Confederation, 27–32, 69, 78, 107, 128.
Asbury, Francis, 181; and Cokesbury College, 166–173; journal of, 170, note.
Asbury College, sketch of, 173, 174.
Ashmun, *Rev.* Jehudi, sent to Liberia, 503, 505, 506, 533.
Astor, John Jacob, and the Oregon country, 559; and the fur trade, 566, 596, 597, 605, 606.
Athenaeus, quoted, 386.
Atilius, A., 371.
Attalus, wealth of, 393.
Atticus, slaves of, 387; Cicero's letter to, 414.
Attorney-General, office of, created, 47.
Auctoritas, meaning of, 333.
Audibert, Scavinis, 301.
Augusta, trading post at, 557.
Augustus, 344; Suetonius on, 387.
Ausprand, 301.
Austria, and Liberia, 517.
Autari, death of, 253, note.
Authari, gains the throne, 276.
Auxilia, defined, 285, note.
Ayres, *Dr.* Eli, sent to Liberia, 501, 502, 504.

B

Bacon, Ephraim, leads colonists to Liberia, 501.
Bacon, *Rev.* Samuel, and African colonization, 500, 501.
Bacon's Rebellion, 556.
Bakufu party, in Japan, 436, 437.
Baltimore, receipts and expenditures in 1888, 100 ff.
Baltimore, the first *Lord*, 201.
Baltimore and Ohio Railroad, and the Johns Hopkins University, 184, 185.
Baltimore College, sketch of, 163–165.
Baltimore Female College, sketch of, 180.
Baluzii, 299, note; 330, note.
Bancroft, quoted, 201, 569.
Bangs, *Dr.*, quoted, 174.
Banks, National, 105.
Bankson, John P., and African colonization, 500.
Barnard, Henry, and St. John's College, 158.
Basle Missionary College, 536.
Bathurst, *Earl*, and African colonization, 498.
Beauharnois, Fort, established, 577.
Beaujean, leads French troops against Braddock, 581.
Begon, 585; quoted, 573.
Bell, A. Graham, 206, 207.
Bembo, *Cardinal*, collections of, 402.
Bemis, *Dr.* Edward, quoted, 88.
Benton, *Senator*, and the Indian trade, 559, 600; on the West, 614; quoted, 612.
Berengar I., diploma of, 292.
Berenger, 310; and temporal power, 278, 313.
Berlin, University of, growth of, 194.
Bernardi Comiti, 301.
Bibliotecharius, Anastasius, 287; quoted, 290.
Bibulus, and Cæsar, 415.
Bienville, quoted, 556.
Billings, *Dr.* John S., 184, 206.
Black Hawk's War, 607.
Bladen, *Gov.*, 152, 153, 156, 157.
Blatchford, *Justice*, 73.
Bloomfield, *Dr.* M., 204.

Blyden, *Prest.* E. W., on the negro question, 488.
Boilvin, Nicholas, report of, 607.
Bolae, capture of, 353, 355.
Boone, enters Kentucky, 558.
Borius, Spurius, proposes agrarian law, 401-403.
Bosin-Simatsu, 440, note; 448, note.
Bougainville, cited, 581.
Bowdoin, James, and Franklin, 598.
Bracton, cited, 405.
Braddock, defeat of, 581; road of, 613.
Bradford, on the fur trade, 553.
Bradley, *Justice*, 73.
Brewer, *Justice*, 73.
Broadus, *Dr.* John A., lectures of, 206 ff.
Brooks, *Rev.* N. C., and the Baltimore Female College, 180.
Brooks, *Prof.* Wm. K., and Johns Hopkins University, 204.
Brown, George William, 217.
Bruce, Philip, Froude's letter to, 487.
Brunetti, 269, 277, 299, 308; quoted, 276.
Brutus, death of, 420; quoted, 340, note.
Bryce, James, 207, 465.
Bryn Mawr College, opening of, 210.
Bryne, *Dr.* Wm., and Mt. St. Mary's College, 178.
Buchanan, Thomas, at Liberia, 507.
Buddhism, 446.
Buell, *Mr.* T. R., and the Maryland College, 179.
Büttikofer, on the zoology of Liberia, 490.
Burgess, Ebenezer, visits Liberia, 498.
Buxton, *Sir* T. F., on the slave trade, 533.

C

Cabinet, the English, 13; the American, 46–48.
Cable, George W., 207.
Cabot, voyage of, 560.
Caere, submission of, 379.
Caesar, 338, note; 350, 386; and the land question, 414, 418; death of, 419, 421.
Caldwell, Elias B., and African colonization, 497.
Cales, capture of, 379.
Calhoun, 125; and Indian trade, 600; quoted, 126.
Calvert, George, 201.
Cambridge University, 230; and African colonization. 493.
Camillus, opposes the *Lex Licinia*, 362 ff.
Campanus Ager, 416.
Canada and the fur trade, 583.
Canciani I., 299, note.
Canuleius, Caius, 362.
Capua, capture of, 379.
Caracalla, circus of, 385.
Carbo, 394.
Carlovingians, fall of the, 297.
Carolinas and the fur trade, 557.
Carroll, Charles, of Carrollton, 151, 201; and St. Charles's College, 178.
Carroll, *Bishop* John, and St. John's College, 157; and St. Mary's Seminary, 176.
Carroll, *Gov.* John Lee, 187.
Carthaginians, trading posts of, 548.
Cary, Lot, missionary, 536.
Casaubon, Isaac, precocity of, 196.
Cassius, death of, 420.
Cassius, spurious law of, 344–346, 357, 389.
Catacombs of St. Sebastian, 385.
Catawbas, and the fur trade, 556, 557.
Cathcart, Edward, 297, note.
Cato, 387; recommends usury, 377; quoted, 327, note.
Cayley, Arthur, 207.
Census, superintendent of the, 60 ff.
Champlain, on inter-tribal trade, 551; and the fur trade, 566.
Charlemagne, and the Lombards, 262, 281, note; 283, note; legislation of, 292, 293, 294, 297, 298; and the *Scabini*, 299; placitum of, 300; and the bishops, 308, 310, 311; quoted, 301 ff., 304, note.
Charles the Bald, 277, 311, 312, 313, 314.

Charles the Fat, 311, 314; diplomas of, 279, note.
Chase, Salmon P., 72; quoted, 128.
Cherokees and the fur trade, 556, 557, 608.
Chesnaye, Aubert de la, quoted, 567.
Cheston, *Mr.* Galloway, 187, 217.
Chickasaws, and the fur trade, 556.
Child, Francis J., 206.
China, route to, 562.
Chippeways, 576, 577, 578, 584; and inter-tribal trade, 550; location of, 564; destroy English trade, 581.
Chisholm v. *Georgia*, 74.
Choctaws, and the fur trade, 556 ff.
Chonteau and *Sen.* Benton, 559.
Christianity, expelled from Japan, 445.
Cicero, 328, 331, note; 336, note; 338, note; 369, note; 374, 385, 398, note; 408, 409, note; 410, 412, note; 413, note; 417, note; 419, note; and distribution of lands, 332; slaves of, 387; opposes the agrarian law of Rullus, 413 ff., 418; quoted, 333, note; 340, note; 382, note; 384, 393, note; 398, note; 401, 402, 420, note.
Cinna, 417; government of, 411.
Civil Service, Act, 49, 62; Commission, 49, 65, 66.
Civil War, in the United States, 129, 156; and Mt. St. Mary's College, 178.
Civitas, meaning of, in Lombardy, 265.
Clark, George Rogers, Hamilton attacks, 585.
Clarke, Lewis and, 610, 611, 614.
Clarke, J. Thacher, 207.
Clarkson, and African colonization, 493.
Claudius, Appius, 348, 353, 394; quoted, 349.
Clay, Henry, and African colonization, 497.
Clefis, death of, 276.
Cleveland, nominated President, 118.
Cocke, *Dr.* James, and the University of Maryland, 159.
"Code Napoleon," 334.
Cohen, *Col.* Mendes I., his gift to Johns Hopkins University, 216.
Coit, *Prof.*, and the College of St. James, 175.
Coke, *Rev.* Thomas, and Cokesbury College, 166–169, 171, 172.
Cokesbury College, sketch of, 166–173.
Colbert, Patoulet writes to, 571.
Colden, Cadwallader, quoted, 582.
Colonies, American, 19–24; Indian trade in, 553–559; Roman, 339–343.
Colonization of Liberia, 14–31, 492–508.
Comitia Centuriata, 411.
Comitia Tributa, 375.
Commons, English House of, 12 ff.
"Compact Theory," 129.
Confederation, the New England, 25.
Confucianism, 446.
Congress, Stamp Act, 23, 26; Continental, 26, 95, 129, 599; in 1783, 30; the Fiftieth, 44; the Fifty-first, 45; librarian of, 68.
Congressional Government, 41–45.
Considius, Gaius, 350.
Constance, Peace of, 309.
Constitution, adoption of the, 31–36; the preamble, 130; quoted, 39, 71, 123; fourteenth amendment to, 112.
Consular service, 51; consular reports, 462, 469, note.
Convention, Albany, 25; of 1787, 31–34; the Annapolis, 610.
Conventions, National, and Presidential campaigns, 116–119.
Cook, *Rev.* J. P., MSS. of, 167, note.
Cooley, Thomas M., 206.
Cordell, *Dr.* E. F., 159, note.
Coreoli, capture of, 355.
Cornelia, riches of, 384.
Cornell University, 187, 198.
Corpus Inscriptionum Latinarum, 402.
Corson, Hiram, 207.
Councilman, *Dr.* Wm. T., 204.
Craig, *Dr.* Thomas, 204.
Crassus, 386, 417; speculations of, 377; riches of, 385, 387; approves the Lex Julia Agraria, 416.
Crawford, and the Act of 1820, 62.

Creeks, and the fur trade, 556, 557, 608.
Creighton, Mandell, 207.
Cromwell, in Ireland, 412.
Crozier, *Dr.* Samuel A., and African colonization, 501.
Cuba, annexation of, 132.
Cuffee, Paul, and African colonization, 494.
Curius Dentatus, agrarian law of, 366–368.
Curtis, quoted, 21, 71.
Curtis Ducalis, 276.
Curtis Regia, 276.
Customs duties, 96.
Cuvier, precocity of, 196.
Cyane, 501, 504.
Cyrus, the, sails to Liberia, 505.

D

Dablon, on the Wisconsin Indians, 571; and the Northwest, 606.
Daimios, 436, 437, 443, 455, 462; the Shogun consults the, 432; weakness of, 438; council of, described, 439–441, 457; encourage literature, 444; character of, 446 ff.; and abolition of feudalism, 461.
Dai-jo-Kuan, 451.
Dai-Nihon-Shi, compilation of, 436, 444.
Daishin-in, 474.
Dakota Indians, 563.
Dalrymple, *Rev.* E. A., and the University of Maryland, 165.
Dana's work on mineralogy, 197.
Dartmouth College vs. *New Hampshire*, 74.
Dashiell, Richard, death of, 504.
Davis, Henry Winter, 157.
Davis, *Rev.* Henry L., and St. John's College, 157.
Davidge, *Dr.* John B., and the University of Maryland, 159.
Davus, Horace's slave, 388.
Day, at Yale, 197.
Decemvirs, election of, 362; position of, 364.
Declaration of Independence, 127, 129.
De La Barre, *Gov.*, the king's instructions to, 571.
Delaware trade in 1663, 555.
Delitsch, Fr., 214.
Democracy, defined, 13.
Denmark, and Liberia, 517.
De Repentigny, career of, 579–581.
Desiderius, and Charlemagne, 262; diploma of, 311, note.
De Soto's expedition, 550.
Detroit founded, 575.
Diaconus, Paulus, 240, note; 262, note; 276, 287, 292, note.
D'Iberville, scheme of, 576.
Dickins, John, and Cokesbury College, 167.
Dickson, Robert, in the War of 1812, 585; quoted, 589.
Dickson's Japan, quoted, 437.
Digby, 405, note.
Diman, J. Lewis, 206.
Diodorus, quoted, 388.
Dion Cassius, 363, note; 417, note; 420; quoted, 415, note.
Dionysius, 328, 335, note; 337, note; 344, note; 345, note; 346–352, notes; quoted, 330.
Dix, *Dr.*, death of, 504.
Dobbin, George W., 217.
Documents, public, superintendent of, 61.
Dodai, 437.
Dodge, *Gen.* Henry, 614.
Dominium, defined, 334.
Domitius Ahenobarbus, 386.
Dongan, *Gov.*, and the Indian trade, 555, 573.
Drayton, Wm. S., succeeds *Gov.* Prout, 513.
Dred Scott vs. *Sandford*, 74.
Drummond, *Gen.*, M'Douall's letter to, 590.
Drusus, Livius, demands of, 376; annuls a law, 401; law of, 410.
Du Bourg, *Rev.* Wm., and St. Mary's Seminary, 176, 177.
Du Chesneau, quoted, 566.
Du Lhut, on Lake Superior, 570, 573.
Dubois, *Rev.* John, and Mount St. Mary's College, 177, 181.
Duncan, *Dr.* Louis, 204.
Dureau de la Malle, 387, note.
Duruy, 359, note; 389, note; 392, note; 396, note; quoted, 382, note.
Dutch, and the fur trade, 553–555, 561.
Dutton, *Rev.* S. W. S., 175.

Duumvirs, the office opened to plebeians, 362.
Dux, defined, 271, 275.
Dwight, *Dr.*, at Harvard, 197.

E

Early, *Gen.*, invades Maryland, 175.
Ebugansus, 277.
Echizen Saisho, 453.
Eddis, Wm., quoted, 153.
Edinburgh University, 155.
Education, Bureau of, 59 ff.; grants for, 109; in Japan, 468.
Education, University, in Maryland, *Dr.* Bernard C. Steiner on the history of, 145–181. *See* Table of Contents, 149.
Eliot, *Prest.* C. W., address of, at Johns Hopkins University, 186, 188–192.
Elizabeth, the, chartering of, 500 ff.
Elliot, *Dr.* A. Marshall, 204.
Elliott, Joseph P., 217.
Ellsworth, Oliver, 72.
Ely, *Dr.* R. T., cited, 100, 204.
Emmott, *Mr.* George H., 204.
English, the, and the Indian trade, 554 ff., 561, 574, 576; conquer New France, 583; State papers, 456, note; 460, note.
Engraving and Printing, Bureau of, 52, 53.
Eric the Red, saga of, 551.
Erie, the, goes to Liberia, 520.
Eries, conquered by the Iroquois, 554.
"Ermoldo Nigello Abatis," 308.
Ethnology, Bureau of, 67, 68.
Etruscan trading posts, 548.
Euclid, 198.
Everett, at Harvard, 197.
Executive Departments, 46–48.
Exeter, Phillips foundation in, 201.
Extradition treaty with England, 52.

F

Fabius, army of, 389.
Fabius, Caeso, 346; quoted, 349.
Fabius, Marcus, 347.
Farlow, W. G., 206.
"Federalist," quoted, 70.
Federalists, origin of, 34.
Fell, Thomas, and St. John's College, 159.
Ferguson, *Rev.* Colin, and Washington College, 155.
Feudalism, Japanese, abolished, 459–463.
Fidenae, capture of, 355.
Field, *Justice*, 73.
Finley, *Dr.* Robert, and African colonization, 496 ff., 509.
Fish Commission, 65, 66.
Fiske, John, quoted, 95.
Flaccus, demands of, 376.
Flaccus, Marcus Fulvius, 394.
Flaccus, Siculus, quoted, 336.
Flaminius, Caius, law of, 368–371.
Flavius, proposes agrarian law, 414.
Fonerden, John, 217.
Forestry Bureau, 63.
Foster, *Prof.* Michael, 203.
Fox, Indians, 563, 565, 566; wars of the, 574–578.
France, equips Liberian troops, 517.
Franklin, Benjamin, 32; plan of 1754, 25; and the fur trade, 583, 585, 598, 610.
Franklin, *Dr.* Fabian, 204.
Franks, nomenclature of, 284; institutions of, 293.
Freeman, E. A., 207; quoted, 445.
Frémont, expedition of, 559, 614.
French, the, minister of, quoted, 31; lose the Great Lakes, 554; and the Indian trade, 555, 561, 566–574, 575, 577–580.
Frontenac, and the fur trade, 571, 575.
Frothingham, Arthur L., Jr., 207.
Froude, quoted, 487.
Fuku, functions of the, 450.
Fukuzawa, *Mr.*, career of, 475.
Fuller, *Chief-Justice*, 72, 73.
Fulvius, demands of, 376.

G

Gaius, 333, note; quoted, 334.
Galissionère, and the Ohio region, 583.
Gallicus ager, 368.
Gardiner, A. W., President of Liberia, 526, 528.
Garnett, James M., and St. John's College, 159.

Garrett, John W., 217.
Garrett, Robert, 217.
Garrison, William Lloyd, and African colonization, 532.
Gastald, functions of the, 286–291.
Gellius, quoted, 367, note.
Geminiano II, diploma issued to, 313.
Gen-hei, 444.
Genje Yume Monogatari, quoted, 431, 434, 440.
Genro-in, 474.
Genucius, 350.
Geological survey, 60.
Georgia, in 1756, 28; cedes land to the United States, 107.
Germanus, quoted, 308, note.
Gesho, 445.
Ghent, negotiations of, 590.
Gibbs, J. Willard, 206.
Gijio, functions of, 450.
Gildersleeve, *Prof.* B. L., 203, 209, 214.
Gilman, *Prest.* D. C., on the Johns Hopkins University, 183–217.
Gisulfus Scabinus, 301.
Gladstone, quoted, 34.
Golconda, voyages to Liberia, 521.
Goode, *Dr.* G. Browne, cited, 68, note.
Goodwin, Wm. W., 207.
Gordon, *Midshipman*, in Liberia, 504.
Gosse, Edmund, 207.
Goucher, *Rev.* J. F., and the Woman's College of Baltimore, 180.
Government, types of, 9–14; functions of, 14–18; colonial, 19–24; congressional, 41–45; printing office of the U. S. Government, 67; State, 83–87; city, 92; expenditures of, 98–100.
Gracchi, 348, 350, 384, 386.
Gracchus, Caius, 391, 394, 397, 398.
Gracchus, Tiberius, proposition of, 371; legal reforms of, 389–397.
Grant, *Prest.*, quoted, 472.
Granville, *Lord*, and Liberia, 528.
Gray, *Justice*, 73.
Greek trading posts, 548.
Gregory, *Dr.* C. René, 204.
Gregory II., life of, 290.
Grenville, *Lord*, quoted, 586.
Grenville Treaty, 591.
"Griffen," La Salle's, 570.
Griffin, *Prof.* Edward H., 204.
Griffis, 447; quoted, 469.
Grignon, Amable, and the fur trade, 596, 605.
Grignon, Louis, 594, note.
Grimaldi, 272, note.
Groseilliers, expeditions of, 567 ff.
Guaikoku-Jimu-Kioku, 450.
Guido, and temporal power, 313, 314, note.
Guizot, quoted, 34, 442.
Gumbu-Jimu-Kioku, 450.
Gunthram, quoted, 308, note.
Gurley, *Rev.* R. R., comes to Liberia, 505, 506.
Gwinn, Charles J. M., 217.

H

Haden, F. Seymour, 207.
Hall, *Rev.* Frederick, and Mount Hope College, 175.
Hall, *Prof.* G. Stanley, 203, 207.
Hall, Isaac H., 207.
Hall, *Dr.* Jacob, and Cokesbury College, 171.
Hall, *Dr.* James, his services to Monrovia, 510 ff., 513.
Halsted, *Dr.* William S., 204.
Hamerik, *Prof.* Asger, 187.
Hamilton, Alexander, 32; and the Federalist, 35; and Langlade, 585; attacks George Rogers Clark, 585; defends Jay's treaty, 588; quoted, 69, 70.
Hammond, Jefferson negotiates with, 586.
Hannibal, 370, 372, 379.
Hanno, exploration of, 510.
Hanse towns, befriend Liberia, 517.
Harlan, *Justice*, 73.
Harper, Robert Goodloe, and Monrovia, 506; colony named in honor of, 511.
Harris, *Dr.* J. Rendel, 204, 207.
Harrison, nominated President, 118.
Harrison, *Gov.*, and Reaume, 597.
Harrison, James A., 207.
Harvard University, 157, 198, 201, 230; in colonial times, 152; professors at, 197.
Haskins, *Prof.* Charles H., 547, note.

Hastings, *Dr.* Charles S., 204.
Haubold, 402.
Haupt, *Prof.* Paul, 203, 214.
Havelock, *Sir* A. E., at Monrovia, 528, 529.
Hayti, makes treaty with Liberia, 517.
Heath, and Cokesbury College, 170, 171.
Heinsius, precocity of, 196.
Heishiro, Yokoi, 445.
Hennepin, and Accault, 570.
Henry, and the fur trade, 584.
Henry, Andrew, discovers the South Pass, 614.
Henry, Patrick, quoted, 36.
Henry's researches in electro-magnetism, 197.
Heribannum, defined, 283, note.
Heribergum, defined, 283, note.
Hildeprandus, judgment of, 281.
Hilgard, Julius E., 206.
Hirata, 446.
Hoffman, *Prof.* David, and the Maryland Law Institute, 162 ff.
Holland, and Liberia, 517.
Homestead acts, 110.
Hopkins, Lewis N., 217.
Hopkins, *Rev.* Samuel, and missions in Africa, 492 ff.
Hopkins, *Prof.* W. H., and St. John's College, 159; and the Woman's College of Baltimore, 180.
Hopkins, William, 217.
Hopkinsianism, 492.
Horace, cited, 382, 388.
Hortensius, Quintus, law of, 367, 389.
Hoso Kawa Ukio Daibu, 453.
Hot Springs Reservation, 61.
Howard, *Prof.* George E., 91, note.
Howard, John Eager, liberality of, 201.
Howell, *Dr.* Wm. H., 204.
Hudson Bay Company, 591.
Humanists, 444.
Hume, cited, 331, note.
Humphreys, *Rev.* Hector, and St. John's College, 158, 181.
Hundred Associates, Company of, 566.
Hunter, *Lieut.-Gen.*, 589.
Hurd, *Dr.* Henry M., 204.
Hurons, 565, 566, 567; and the French, 554; and the Iroquois, 554; location of the, 564.
Huxley, *Prof.*, 203.

I

Icilius, 347–349; law of, 335, 350; elected tribune, 354.
Ihne, 335; quoted, 395, 396.
Ii Kamon No Kami, sketch of, 437.
Ii Nawo Massa, 437.
Illinois, Indians, 565.
Indian Affairs, Commissioner of, 58.
Indian Queen Hotel, medical school in, 162.
Indian trade in Wisconsin, *Prof.* F. J. Turner on the character and influence of the, 541–615. *See* Table of Contents, 545.
Indians, on Georgia lands, 108.
Inouye, *Count*, quoted, 473.
Interior, Department of the, 47, 56–61, 108.
International Marine Conference, 51.
International Postal Convention, 467.
International Telegraph Convention, 466.
Interstate Commerce Commission, 65.
Iroquois, 561, 564, 565, 570, 578; and the Dutch, 554; trade of the, 555; and the Wisconsin Indians, 574.
Itagaki, *Count*, leads the Japanese Liberals, 476.
Italy, Lombards in, 239.
Ito, *Count*, quoted, 473.
Iwakura, quoted, 472.
Iyenaga, *Dr.* Toyokichi, on the constitutional development of Japan, 1853–1881, 423–478.
Iyeyasu, 431, 436, 437, 447; quoted, 445.
Iyeyoshi, Shogun, Council of, 432.

J

Jackson, and the spoils system, 49, 66.
James, William, 206.
Janiculum, plebeians withdraw to the, 367.

Japan, constitutional development of, 1853–1881, *Dr.* Toyokichi Iyenaga on, 423–478. *See* Table of Contents, 427.
Jay, John, 35, 72; and the Northwestern territory, 586; treaty of, 587 ff.
Jebb, *Prof.*, lectures at Johns Hopkins University, 206.
Jefferson and the democrats, 116; and nullification, 125; and African colonization, 494, 498; and the Lewis and Clarke expedition, 558; and the Indian trade, 600, 610; and Ledyard, 611; quoted, 586.
Jenkins, *Rev.* O. L., and St. Charles's College, 178.
Jennings, Samuel K., and Asbury College, 173, 174.
Jesuits, pioneers in Wisconsin, 568–570; Relations of 1670, 564.
Jingi-Jimu-Kioku, functions of, 450.
John, charter of, 314; vices of, 431.
John Leyes, the, seized, 508.
Johns Hopkins, founds a University, 183–185.
Johns Hopkins University, 59, 181, 230, 485; *Prest.* D. C. Gilman's sketch of, 183–217. *See* Table of Contents, 149.
Johns Hopkins Hospital, 184–185.
Johnson, *Prest.*, and reconstruction, 111.
Johnson, Elijah, in Liberia, 488, 502, 526.
Johnson, H. R. W., in Liberia, 526.
Johnson, Reverdy, Jr., 217; quoted, 187 ff.
Jo-i party, and Perry's coming to Japan, 434, 436.
Joliet, descends the Mississippi, 570.
Judd, *Rev.* Bethel, and St. John's College, 157.
Judiciary, the federal, discussed, 69–77; act of 1789, 71.
Julienses, 405.
Jus, Italicum, 373, 375; *Latii*, 373, 375; *Quiritium*, 334; *Romanum*, 373.
Justice, Department of, 62.
Justinian, legislation of, 255.

K

Kagoshima, bombardment of, 438, 439, 443.
Kai-Koku party, and Perry's visit, 434, 436.
Kai-Koku Simatsu, 436, note.
Karloman, 311, 314.
Karlsefni, and the fur trade, 552.
Keiho-Jimu-Kioku, 451.
Keiki, Shogun, quoted, 455.
Kelly, *Dr.* Howard A., 204.
Kemp, *Rt. Rev.* James, 161.
Kennedy, *Hon.* John P., and the University of Maryland, 165.
Kent, James, at Columbia College, 197.
Kent, Duke of, 589.
Kent County School, founded, 153.
Kentucky Resolutions of 1798, 125.
Kerfoot, *Bishop*, and the College of St. James, 175.
Kickapoos, 565, 574, 576.
Kido, 445, 472; memorial of, 461.
Kimball, *Dr.* Arthur L., 204.
King, Francis T., 217.
Kingsley, at Yale, 197.
"King Williams School," 154, 157.
Kioto Government Gazette, quoted, 451.
Klentze, 402.
Knies, Carl, quoted, 94.
Knox, John J., 207.
Kogisho, 455; opening of the, 456, 457.
"Kogisho Nishi," 457.
Kojiki, 446.
Komon, opposes the Shogunate, 444.
Koran, the, in Africa, 537.
Kuaikei-Jimu-Kioku, 451.
Kuges, council of, 436, 439–441, 443–457.
Kunnemund, killed, 249, note.

L

Labicum, capture of, 355.
Labor, Bureau of, 47, 64, 65.
Lactucinius, 327.
La Houtan, 574.
La Jonquière, quoted, 579.
Lalor's Cyclopaedia, 210.
Lamar, *Justice*, 73.

Lamargueritte, engagement of, 593, note.
La Motte Cadillac, scheme of, 576.
Lanciani, Rodolfo, 207.
Land, public, 57, 107–111. *See also* Roman Republic.
Lange, 389.
Langlade, Augustin de, and Indian trade, 578–581, 584, 585.
Langley, S. P., 207.
Lanier, Sidney, 206.
Lanman, 475.
La Salle, and Indian colonization, 570; voyage of, 571, 606; quoted, 570, 572.
Latifundia, described, 382–386.
Latrobe, *Hon.* F. C., 187.
Latrobe, John H. B., and African colonization, 510.
Leavitt, *Rev.* J. D., and Washington College, 159.
Ledyard, and the fur trade, 558; project of, 610, 611.
Legal-tender decisions, 75.
Lepidus, agrarian law of, 420.
Le Sueur, commands French posts in Wisconsin, 573.
Leudis, defined, 283.
Levering, *Mr.* Eugene, institutes a lectureship at Johns Hopkins University, 206.
Levering Hall, use of, 215.
Lewis, Thomas H., and Western Maryland College, 180.
Lewis and Clarke expedition, 558, 610, 611.
Lewis II., constitution of, 290; law of, 313.
Lewis the Pious, laws of, 302; and Ermoldo, 308.
Lex, Antonia, 419; Cassia, 344–346, 355; Flaminia, 368–371; Hortensia, 367; Julia Agraria, 415–418; Icilia, 350 ff.; Licinia, 356–365, 392; Repetundarum, 402; Sempronia Tiberiana, 371, 389–397; Sempronia Gaiana, 397; Thoria, 399–408.
Lexington, battle of, 26.
Libbey, Wm., Jr., 207.
Liberia, history of, by *Dr.* J. H. T. McPherson, 479–541. *See* Table of Contents, 483.
"Liberia Joint Stock Steamship Company," 527.
Liberia Herald, 511.
"Liberia Packet," 511.
Licinian Law. *See* Lex.
Licinius, 389; law of, 346, 347, 350, 356–365, 371; combats slavery, 386 ff.
Licinio-Sextian law, 392.
Ligustinus, Spurius, poverty of, 382.
Lincoln, election of, 75; death of, 111; edict of, 532; quoted, 129, note.
Linnaeus, precocity of, 196.
Lisa, Manuel, and the South Pass, 614.
Liutprand, 273, 276; and Pope Zacharias, 287; quoted, 292, 296.
Livy, 328, 389.
Locke, 169.
Lombards, the communes of, from the VI. to the X. century, *Dr.* William Klapp Williams on, 233–318; the Lombard conquest and its results, 239–258; prevalence of feudalism, 259–261; Charlemagne's invasion, 261–263; Lombard society in the eighth century, 263–265; territorial boundaries, 265–270; *civitas* defined, 265; *districtus* defined, 267; functions of the *Judex*, 271–279; fiscal system, 280–285; functions of the *gastald* and the *sculdahis*, 286–292; the administration of Charlemagne, 294; increased importance of the local units, 295–297; functions of the *scabinus*, 297–305; position of the bishops, 305–315; the immunities and privileges given churches and monasteries by the Frankish kings, 309–313; summary, 315–317; list of authorities, 317.
Long, on Roman history, 410.
Loomis, *Prof.* Elias, 175.
Lords, House of, and its functions, 12 ff.
"Lords Commissioners for Trade and Plantations," quoted, 584.
Lothaire, charter of, 313.
Lothar I., quoted, 304, 305.
Louisiana Colonization Society, 506.
Lovejoy, *Prof.* Perley R., and Newton University, 176.
Lowell, James Russell, 206.

Loyola College opened, 178.
Lucca, *placita* of, 301.
Lucullus, riches of, 385.
Lupo, quoted, 298.
Lycurgus and the Spartans, 332.

M

Mabillon, 298.
McCaffrey, *Rev.* John, and Mt. St. Mary's College, 177.
Macchiavelli, quoted, 264.
McCrady, John, 207.
McCulloch vs. Maryland, 74, 127, note.
McCoy, John W., bequest of, 216.
McDonogh, John, his gift to education, 201.
McDouall, *Col.*, his letter to *Gen.* Drummond, 590.
McDowell, *Dr.* John, and St. John's College, 157.
Mackinaw Company, 597.
McLane, James L., 217.
McPherson, *Dr.* J. H. T., on the history of Liberia, 481–541. *See* Table of Contents, 483.
Madison, James, 32, 35; and nullification, 125.
Maecilius, Spurius, 353.
Mallet, John W., 206.
Malthus, on population, 537.
Mandingoes, manufactures of the, 491; and the Liberians, 522, 523, 537.
Manlius, death of, 356.
Mansfield, *Lord*, decision of, 493.
Marcus, 346.
Marin, and the fur trade, 581.
Marius, and the agrarian reforms, 376, 408, 409, 417.
Marquette, on the Indian trade, 551, 570.
Marsh, *Col.* Charles, and African colonization, 497.
Marshall, John, 72, 73; quoted, 123, 127.
Martin, *Prof.* H. N., 203, 209, 214.
Maryland, her receipts and expenditures in 1888, 100; sketch of the University of, 159–166; Colonization Society, 506; in Liberia, 508–514.
Mascoutins, 564–567, 574–577.
Massachusetts, colonial government of, 21; and protection, 133.
Mayflower, the, and African colonization, 501.
Mechlin, *Dr.*, and Liberia, 506.
Meiji government, 464, 478.
Melius, Spurius, 352.
Menard, visits the Northwest, 568.
Menius, 349; introduces a bill, 354.
Menomonees, location of the, 563, 566.
Mercer, *Gen.*, and African colonization, 496 ff., 499.
Merchant's National Bank, 184.
Metella, Caecilia, tomb of, 385.
Metellus, refuses to take the oath, 409.
Metellus Creticus, 385.
Methodist Magazine, quoted, 173.
Metilius, Spurius, 353.
Mexico, war with, 133.
Miamis, 564, 565, 574, 576.
Michigan, University of, 187, 198, 485.
Mill, John Stuart, on representative government, 464.
Miller, *Hon.* S. F., quoted, 71.
Mills, Samuel J., and African colonization, 496, 498.
Mint, Director of the, 52, 53.
Missi Dominici, 294.
Missions, foreign, 496.
Mississippi Colonization Society, 509.
Missouri Compromise, 75, 132, 133.
Mito family, 436.
Mohican, goes to Liberia, 520.
Mommsen, 335; quoted, 394–396, 417.
Monarchy, defined, 11–13.
Money, W. W. and W. F. Willoughby on, 103–107.
Monogatori, Genje Yume, quoted, 431, 434.
Monroe, and African colonization, 496, 498, 499.
Monrovia, settlement of, 506, 509.
Mons Sacer, plebeians return from, 365.
Montcalm, at Quebec, 582.
Montesquieu, 331, 442; quoted, 542.
Moore, *Hon.* J. B., on extradition, 52, note.
Mori, 472.

Morris, *Prof.* Chas. D., 203.
Morris, George S., 206.
Morris, Robert, 32.
Morse, *Dr.* H. N., 204.
Morton, on inter-tribal trade, 551; quoted, 553.
Mossman, 473, note.
Motoori, 446.
Moulton, R. G., 147; on university extension and the university of the future, 219–232.
Mount Hope College, sketch of, 174.
Mount Saint Mary's College, sketch of, 177, 178.
Muratori, 301, 313; quoted, 277, 281.
Musardu, Anderson's journey to, 523.
Museum, Royal, of Sweden, 490.

N

Nadoussioux, 571.
Nagato Shosho, 453.
Naikoku-Jimu-Kioku, 450.
Napoleon, code of, 469.
Napoleon, Louis, and Liberia, 517.
Nariaki, leads the Jo-i party, 436.
National Museum, 67, 68.
Nautilus, the, sails to Liberia, 501.
Navy Department, 47, 56.
Negro problem. *See* Liberia.
Nero, 383.
New England, local government in, 89; Indian trade in, 552.
New France, fur trade of, 566; conquest of, 583.
New Jersey plan of 1787, 33.
New York, founding of, 554; Colonization Society of, 506, 509.
Newcomb, *Prof.* Simon, 203, 206, 214.
Newman, John Henry, 199.
Newton University, sketch of, 175.
Nicolet, Jean, and Indian trade, 565, 566.
Niebuhr, and Roman landed property, 331 ff.
Nihon Guai Shi, 445.
Niles, Hezekiah, 174.
Norsemen, and the fur trade in America, 551.
North, the, and slavery, 130–133.
Northwest, the fur trade in the, 559–562; Company, 587, 597; and the Ordinance of 1787, 78.
Norway, makes treaty with Liberia, 517.
Nullification, theory of, 125.
Numa, 332.

O

Octavius, 348; removed from office, 391; agrarian law of, 420.
Odyssey, quoted, 547.
Oglethorpe, Whitefield to, 534.
Ohio Company, 583, 585.
Okubo, 445, 472.
Okubo, Ichizo, 454.
Okubo, Toshimitsu, 454.
Okuma, *Count*, quoted, 466, 467, 468.
Oldham, trading posts of, 553.
"One Mile Tavern," 176.
"Ordinance of 1787," 78, 79.
Oregon, occupation of, 559.
O-sei, in Japan, 436.
Osler, *Dr.* William, 204.
Oswego, the, arrives at Sierra Leone, 504.
Ottawas, 564, 565, 566; Radisson's visit to, 568; dissatisfaction with the French, 575.
Otto of Freising, 281.
Oxford, University of, 230.

P

Pacific Fur Company, 596.
Pacific Railroad, 612; land grant to, 100; Benton advocates the, 559.
Pan-American Congress, 51.
Pansa, C. Vibius, 420.
Pantheon, 161.
Parkes, *Sir* Harry S., and the Shogun, 448, 455, 456.
Parkman, on the fur trade, 575; quoted, 551.
Parliament, English functions of, 12 ff.; the Japanese, 457.
Parties, political, in the United States, 120–133; machinery of, 113–115.
Patents, Commissioner of, 57.
Paterculus, Velleius, 420.
Patoulet, writes to Colbert, 571.
Patterson's New Jersey plan, 32, 33.

Payne, James S., president, 522, 523, 526.
Peabody, George, endowment of, 201.
Peabody Institute, 187.
Peirce, Benjamin, at Harvard, 197.
Pennsylvania, University of, 157; Colonization Society of, 506, 509.
Pensions, Commissioner of, 57.
Perrot, Nicholas, and the Northwest, 570; and the Indians, 573–575.
Perry, his visit to Japan, 431, 434, 440, 442, 447.
Petilius, proposes agrarian law, 352.
Petronius, cited, 383 ff.
Petrus, 307.
Petun Hurons, 566.
Philippi, battle of, 420.
Philippus, Marcus, proposes agrarian law, 408.
Phillips foundation, 201.
Phoenicians, develop the trading post, 547 ff.
Pickering, and the Indian trade, 599.
Pierce, nominated President, 118.
Pierce, Charles S., 206.
Pietro, charter of, 313.
Pinckneys, the two, 32.
Pinkney Hall, building of, 158.
Piso, 327.
Plato, 198, 444.
Pleasants, J. Hall, 217.
Pliny, quoted, 383, 385.
Plutarch, 328, 384, 386, 387; quoted, 385.
Polybius, 369.
Pompey, 415, 418; gardens of, 383; and Caesar, 386; proposes agrarian law, 414; approves the lex Julia, 416; veterans of, 417.
Pomptinus Ager, 354.
Pontiac's War, 579, 583.
Pontificius, 349.
Pontonatemick, 568.
Popillius, Publius, 394.
Porcius, 327.
Porlier, and the fur trade, 605.
Porpoise, the, comes to Liberia, 505.
Portugal, and Liberia, 517.
Postoffice Department, 47, 61, 62.
Postal system of Switzerland, 61; of Japan, 467.
Postal Union, Universal, 61.
Posthumius, crimes of, 378.
Postmaster-General, office of, 47.
Pottawattomies, 563–567, 575, 577.
Pottoni, and Charlemagne, 308.
Pre-emption Acts, 110.
Presidential successions, 37.
Priestley, James, and Baltimore College, 163.
Prince Regent, schooner, stops at Liberia, 504.
Princeton, congress at, 31; College, 492.
Property, landed, among the Romans, 7–13.
Protocol of 1871, 528.
Prout, Wm. A., and the Maryland colony in Liberia, 513.
Prussia, befriends Liberia, 517.
Pruyn, quoted, 440.
Publilius, Philo, 389.
Pulaka, journey to, 523.
Punic Wars, 370, 378.
Purviance, John, and the University of Maryland, 162.
Pyrrhus, expedition of, 370.

Q

Quail, the, sails to Liberia, 521.
Queen Elizabeth's School, 200.
Quiritarian ownership, 13–15.

R

Rabennonus, Alerona marries, 281.
Rabillon, Léonce, 206.
Radisson, expeditions of, 567 ff.; quoted, 568.
Rafferty, *Rev.* Wm., and St. John's College, 158.
Railroads, commissioners of, 59 ff.; in Japan, 467.
Rai Sanyo, literary labors of, 445.
Ramsay, James, on slavery, 493.
Randall, *Dr.* Richard, in Liberia, 506.
Randolph, *Rev.* Alfred M., 187.
Randolph, Edmund, the "Large State Plan" of, 32; and Indian trade, 587.
Randolph, John, and African colonization, 497.
Rau, Charles, 550.
Reaume, at Green Bay, 597.
Rebellion, the late, 156.

Reconstruction of the United States, 111 ff.
Reed, *Speaker*, quoted, 57.
Reformation, in Europe, 445.
Regulation Act of 1774, 21.
Reid, *Dr.* C. W., and Washington College, 156.
Remsen, *Prof.* Ira, 203, 209, 214.
Rensselaer Polytechnic Institute, 203.
Representatives, House of, its composition, 41–44.
Republic, defined, 14.
Restoration, in Japan, 467, 468.
Revenues, government, 94–98.
Revolution, the American, 22, 23, 57, 151.
Rhegium, capture of, 379.
Rhotari, 276; quoted, 237, 291.
Richelieu, 437; and the fur trade, 566.
Rinehart, bequest of, 201.
Ringgold, Richard W., and Washington College, 156.
Ri-Shi-Sha, 476.
Ritter, Carl, quoted, 516, note.
Rivers, William J., and Washington College, 156.
Roberts, Joseph Jenkins, his career in Liberia, 488, 507 ff., 513, 516, 517, 518, 525, 526, 528.
Roches, M. Leon, and the Shogun, 448.
Rock Hill College, 179.
Rocky Mountains, discovery of the, 558.
Rome, at the time of the Gracchan Rogations, 371–378; trading posts of, 548.
Roman Republic, public lands and agrarian laws of the, *Dr.* Andrew Stephenson on, 319–421. *See* Table of Contents, 325.
Romero, on the Pan-American Congress, 51, note.
Rothschilds, in politics, 460.
Rousseau, 169.
Rowe, *Sir* Samuel, visits Monrovia, 529.
Rowland, *Prof.* Henry A., 203, 209.
Royce, Josiah, 207.
Roye, Edward James, in Liberia, 523–526; and Lord Granville, 528.
Rudorff, 404, 406.
Rullus, 413; land bill of, 418.
Russworm (Russwurm), in Liberia, 488, 511.

S

Saburo, Shimadzu, 440.
Sagard, on the fur trade, 566.
St. Charles's College, 178, 179.
St. James, College of, 175.
St. John's College, history of, 150–159.
St. Joseph, priest of, 575.
St. Louis, and the fur trade, 559.
St. Lusson, claims the Northwest for France, 569.
St. Mary's College, 178.
St. Mary's Seminary, 176–178.
St. Pierre, at Fort Le Bœuf, 581.
St. Sebastian, catacombs of, 385.
St. Sulpice, Society of, 178.
Saigo, 445, 471.
Sammi, Ohara, 440.
Samnite War, 366 ff.
Samurai, meetings of, 441, 442, 474, 475.
Sanyo, functions of, 450.
Satow, Ernest, 456; quoted, 445.
Satsuma, imports foreign ideas into Japan, 438, 439, 453; Rebellion, 477.
Saturninus, laws of, 408–410.
Sauks, 563–566, 574, 576, 578.
Savigny, 266.
Scabinus, defined, 286, 297–305.
Scaevola, 394.
Scharf, 152, 153, 164.
Schouler, quoted, 26.
Schrader, 549.
Schuyler, Eugene, 207.
Schwegler, 350.
Scipio, assigned land for his soldiers, 369; Latins appeal to, 397.
Scott, *Gen.*, and the presidency, 118.
Sculdahis, defined, 286, 291.
Seal fisheries question, 52.
Secession, right of, 126.
Seido-Jimu-Kioku, 451,
Sei-Ki, 445.
Seleucidae, rule of the, 370.
Seligman, E. R. A., 100.
Sempronius Gaius, laws of, 403, 404. *See* Lex.
Senate, composition of, 41–44; election of members, 39 ff.

Seneca, 384.
Servius Tullius, and the *Ager Romanus*, 330, 344; reforms of, 337; military constitution of, 396.
Seth Grosvenor, sails to Liberia, 521.
Seward, Pruyn's letter to, 440.
Sextius, Lucius, 353; and the *Lex Licinia*, 356–365.
Sharp, Granville, and African colonization, 493.
Shaw, *Dr.* John, and the University of Maryland, 159.
Shawnese Indians, 556.
Shea, *Dr.*, on the Wisconsin Indians, 562.
Shelburne, cedes Illinois country to the United States, 585, 586.
Sheppard, Moses, bequest of, 201.
Sheriff, Lawrence, endowment of, 200.
Shimada, *Mr.* Saburo, 437.
Shimonosheki, bombardment of, 438, 439, 443.
Shintoism, revival of, 445.
Shoguns, régime of, 431; patrons of literature, 444; overthrow of, 446–450, 464; quoted, 455.
Shozan, Sakuma, 445.
Sibyl, books of the, 362.
Sicilian slave war, 394.
Siena, bishop of, 269.
Sierra Leone, colony founded at, 493.
Sigonius, 347; and the Lex Repetundarum, 402.
Silliman, at Yale, 197.
Silver Bill of July 14, 1890, 106.
Sioux, 564, 567, 577; and intertribal trade, 550, 563, 573, 575.
Sismondi, quoted, 301.
Skrellings, and the fur trade, 552.
Slavery, and the Convention of 1787, 33; and the Ordinance of 1787, 79; abolition of, 111; its origin in the United States, 131 ff.; at Rome, 386–389; in Sicily, 394; in Liberia, 491; and colonization, 533.
Smeathman, *Dr.*, letters of, 493.
Smith, Alan P., 217.
Smith, *Capt.* John, and the fur trade, 552.
Smith, *Hon.* Robert, and the University of Maryland, 161.
Smith, Thomas M., 217.
Smith, *Dr.* Wm., and Washington College, 153–155, 181.
Smithson, James, quoted, 67.
Smithsonian Institution, 67, 68.
Snorri, and the fur trade, 552.
Somerset case, *Lord* Mansfield on the, 493.
Sosai, functions of, 450.
South, the, local government in, 89, 90; and slavery, 130–133.
South Carolina in 1756, 28; and nullification, 126.
South Pass, discovery of the, 613.
Southwest Company, 597.
Speciosus, of Florence, 299.
Spence, *Capt.* R. T., arrives at Sierra Leone, 504.
Spencer, Herbert, quoted, 441.
Spieker, *Dr.* Edward H., 204.
Spoils system, and Jackson, 49.
Spottswood, *Gov.*, and the fur trade, 557; quoted, 582.
Sprague, 173.
Stamp Act, repealed, 26; Congress, 23, 26.
Starcke, 549.
State Department, 46–52.
"States' Rights Party," 124, 130.
Stedman, *Mr.* E. C., 206.
Steiner, *Dr.* Bernard C., on university education in Maryland, 145–181.
Stephen II., bull of, 269.
Stephenson, *Dr.* Andrew, on the public lands and agrarian laws of the Roman Republic, 319–421.
Stevens, John C., gives vessel to Liberia, 518, 521.
Stevens's *Methodism*, 167.
Stewart, C. Morton, 217.
Stillman, Wm. J., 207.
Stockton, *Lieut.*, sent to Liberia, 502.
Stolo, 327.
Storm King, goes to Liberia, 520.
Story, *Justice*, quoted, 20, 23, 69.
Story, *Dr.* Wm. E., 204, 207.
Strong, sent to Liberia, 503.
Stubbs, quoted, 443.
Styles, Ezra, and African colonization, 492 ff.
Sub-treasury system, 53.
Suetonius, quoted, 387.
Sulla, riches of, 385; colonization, plan of, 412; revolution of, 411–413, 417, 418.

Sulmo, razed, 411.
Sulpicians, and St. Mary's College, 176; and Mount St. Mary's College, 177.
Supreme Court, described, 71, 72, 120, 127 ff.
Sutton, *Rev.* Andrew J., and Washington College, 156.
Sweden, and Liberia, 517.
Sylvester, *Prof.*, 203, 209.

T

Tacitus, 13, 276; quoted, 248.
Taiko, 431.
Talon, and the fur trade, 555.
Taney, R. B., 72, 74.
Tarentum, capture of, 379.
Tariff of 1828 and 1832, 125, 133.
Taxes, defined, 94; State and local, 97.
Telegraph, in Japan, 466.
Teloneum, defined, 284, note.
Tentmann, commission to, 300.
Terentilius Arsa, 389.
Terra Censualis, defined, 285, note.
Territories, government of, 80–82.
Texas, annexation of, 132; *vs.* White, 128, note.
Theodolinda, and Christianity, 253, note.
"Theodolphus Amelianensis," 308.
Thomas, *Dr.* James Carey, 209, 217.
Thomson, *Sir* Wm., 207.
Thorius, Spurius, law of, 401–403.
Thornton, *Dr.* Wm., and African colonization, 493.
Thwaites, Reuben G., 547, note.
Tiberius, 348.
Timber culture acts, 110.
Titius, banishment of, 410.
Toda Idzu No Kami, 432.
Tokugawas, rule of the, 437, 443–447.
Tommasio, 307, note.
Toraziro, Yoshida, 445.
Tosa memorialists, 477.
Tosa Sakio No Shosho, 453.
Town meetings, New England, 14.
Tractoria, defined, 283, note.
Trade, Indian, in Wisconsin, *Prof.* F. J. Turner on the character and influence of the, 541–615. *See* Table of Contents, 545.
Trasimenus, Lake, battle of, 368.
Treasury Department, 47, 52–54.
Treaty, of 1783, 585, 586; Jay's, 587 ff.; the Grenville, 591; of Verdun, 246, 313, note.
Trelease, Wm., 207.
Tribune Monthly, 51, note; 52, note.
Trimalchio, riches of, 383, 384.
Trowbridge, John, 206.
Turnbull, *Mr.* and *Mrs.*, endow a lectureship of poetry, 206.
Turner, *Prof.* Frederick J., on the character and influence of the Indian trade in Wisconsin, 543–615. *See* Table of Contents, 545.
Twelve Tables, 331, 333.
Tycoon, 447.

U

United States, government and administration of the, W. W. Willoughby and W. F. Willoughby on, 1–143; *see* Table of Contents, 3–5; and Liberia, 517.
University education, history of in Maryland, by Bernard C. Steiner, 145–181. *See* Table of Contents, 149.
University extension and the university of the future, Richard G. Moulton on, 219–232; university extension defined, 219–223; method of, 223–227; based on itinerant teaching, 227–229; the university of the future, 229–232.
Universities; of Maryland, 154, 159–166; of the city of New York, 203; of Pennsylvania, 153, 154; of Virginia, 197, 198.
Urbs, meaning of, 328.

V

Valerius, 347, 350; quoted, 410.
Van Buren, on newspapers in Japan, 469.
Varro, 328, 371; quoted, 388.
Veii, siege of, 352, 355.
Venable, Richard M., 207.
Vercellae, battle at, 409.
Verdun, treaty of, 246, 313.
Veredi, defined, 284, note.

Verenderye, expeditions of, 558.
Vergennes, and the treaty of 1783, 585.
Verrazano, voyage of, 552.
Veseris, battle of, 366.
Veys, 491.
Villiers, Coulon de, captures Washington, 581.
Virgil, Georgics of, 170.
Virginia, University of, 197, 198; Resolutions of 1798, 125.
Virginius, 389.
Volscians, conquest of the, 355.
Von Holst, 126, 206, 207.
Voorhees, address of, 156, note.

W

Waite, M. R., 72.
Walastein, Charles, 207.
Walker, Francis A., 206.
Wallace, Alfred R., 207.
Wallis, *Hon.* S. Teackle, and the University of Maryland, 165.
War, of 1812, 585, 589; the Black Hawk, 566, 607; the Fox, 574–578; French and Indian, 556; of Pontiac, 583; the Revolutionary, 585; Department of, 47, 54, 55.
Ward, *Rev.* J. T., and Western Maryland College, 179, 180.
Ward, William Hayes, 207.
Warnefried, 308.
Warner, Daniel B., and Liberia, 521.
Warren, *Dr.* Minton, 204.
Washington, Bushrod, 497.
Washington, George, 32; inaugurated, 36; elected, 116; and Washington College, 153, 154; and St. Pierre, 581; and the Indian trade, 599, 611; quoted, 29, 30.
Washington College, history of, 153–158.
Waters, *Rev.* Francis, and Washington College, 155, 156.
Watts, *Prof.* Rowland, 153.
"Ways and Means" Committee, 44.
Weather Bureau, 63.
Webster, Daniel, and the University of Maryland, 162.
Wedmore, Frederick, 207.
Weeden, on the Indian trade, 552.
Welch, *Prof.* Wm. H., 203.
Willing, *Dr.* James C., and Washington College, 158.
Wesley, John, 166; and higher education, 167, 170.
West, local government in the, 90.
West Point, Military Academy at, 55.
Western Maryland College, 179.
Whigs, and *Gen.* Scott, 118.
White, *Prest.* Andrew D., 187, 207.
White, Francis, 217.
Whitefield, George, 172; on slavery, 534.
Whitney, Wm. D., 206.
Whitney's Cotton Gin, 132.
Whittingham, *Bishop*, founds the College of St. James, 175.
Wilberforce, and African colonization, 493.
William III., and North Ireland, 412.
William and Mary's College, 151.
Williams, *Dr.* George H., 204.
Williams, *Dr.* William Klapp, on the communes of Lombardy from the VI. to the X. century, 235–318.
Williams College, 496.
Willoughby, Westel W. and William F., on the government and administration of the United States, 1–143.
Wilson, *Sir* Daniel, 550.
Wilson, James, 32.
Wilson, *Prof.* Woodrow, quoted, 465.
Windom, *Sec.* Wm. M., 53.
Winn, J. B., leads colonists to Liberia, 501.
Winnebagoes, 565, 578, 606; and the French, 563.
Winsor, Justin, 207.
Wirt, Wm., and the University of Maryland, 162.
Witenagemot, 439, 442.
Wisconsin, the character and influence of the Indian trade in, *Prof.* F. J. Turner on, 541–615. *See* Table of Contents, 545.
"Wolfoldus Cremonensis," 308.
Woman's College of Baltimore, 180.
Wood, *Dr.* Henry, 204.
Wordsworth, 389.

Wright, *Prof.* John H., 204.
Wright, Robert, and African colonization, 497.
Wyatt, *Rev.* Wm. E., and the University of Maryland, 162.

Y

Yale College, 158, 197, 201, 492.
Yates, Beverly P., and Liberia, 518.
Yellowstone National Park, 61.
Young Men's Christian Association, 206.

Z

Zacharias, *Pope*, Liutprand and, 287.

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